



Paper IV: Statutory Compliance

Statutory Compliance

CERTIFICATE IN ACCOUNTING TECHNICIANS

Paper-IV

STUDY NOTES



Directorate of CAT

The Institute of Cost Accountants of India

(Statutory body under an Act of Parliament)

CMA Bhawan, 3-Institutional Area, Lodhi Road, New Delhi-110003
Ph.: +91-11-24666131, 24666134, 24666167, Telefax: +91-11-43583642

HQ : CMA Bhawan 12, Sudder Street, Kolkata-700016

E-mail : catdelhi@icmai.in; Website: www.icmai.in



New Edition : September 2021

Published by :

Directorate of CAT

CMA Bhawan,
3-Institutional Area, Lodhi Road,
New Delhi-110003

Printed at :

B. M. Offset Printers

H-37, Sector-63, Noida-201301
Ph. : 0120-4111952, 9811068514

Copyrights of these Study Notes are reserved by The Institute of Cost Accountants of India and prior permission from the Institute is necessary for reproduction of the whole or any part thereof.



CAT SYLLABUS 2021

Summary of the Course:

CAT Course Part-I (160 Hrs)

Paper I	:	Fundamentals of Financial Accounting
Paper II	:	Applied Business and Industrial Laws
Paper III	:	Financial Accounting - 2
Paper IV	:	Statutory Compliance

Delivery Strategy

Class Room oral coaching

Learning Strategy

Class Room Learning

On-line/off-line self paced studies through Online self assessment/study module.

ASSESSMENT STRATEGY

On line/off line periodical self-assessment

Course end examination- Multiple Choice Questions

To be answered on-line

Competency Level -Part-II (140 Hrs)

- Computer Fundamentals by Microsoft and Computerized Accounting- Tally ERP 9.0 – 35 hours
- SAP End User Program of 25 hours
- Cambridge - Generic Skills for Employability – 20 hours
- eFiling by experts from Industry – 20 hours
- Introduction to Costing Principles & Preparation of Cost Statements- 40 hours
- 5-days Orientation Programme



PAPER IV : STATUTORY COMPLIANCE

OBJECTIVES

To gain understanding and to provide working knowledge of procedures, records and returns under tax laws and companies act.

Learning Outcomes

- Know the basic principles underlying direct as well as indirect taxes.
- Know various records and returns under tax laws.
- Know statutory compliance under companies act.

(a) CONCEPT OF TAXATION

- Constitution of India
- Taxation under Constitution
- Direct and Indirect Taxes
- Constitutional (101st) Amendment
- Taxes to be subsumed under GST
- Information on Website

(b) GOODS AND SERVICES TAX

- Introduction to Goods and Services Tax (GST)
- Key Concept
- GST Council
- Salient Features of GST
- Benefit of GST
- Ease of Doing Business
- Taxes Under GST
- Central Goods and Services Tax (CGST)
- State Goods and Services Tax (SGST)
- Union Territory Goods and Services Tax (UTGST)
- Integrated Goods and Services Tax (IGST)
- Registration
- Threshold for Registration
- Regular Taxpayer
- Composition Taxpayer
- Non-Resident Taxable Person



- Unique Identification Number
- Registration Number Format
- Structure of GSTIN
- Supply
- Time of Supply
- Value of Supply
- Place of Supply
- Concept of Place of Supply
- Place of supply of goods
- Place of Supply of Services
- Input Tax Credit
- Input Tax Credit Process
- Negative List of Input Tax Credit
- Input tax credit utilization under GST
- Input Tax Credit Reversal
- Payment of Taxes
- Electronic Liability Ledger
- Electronic Credit Ledger
- Electronic Cash Ledger
- Unique Identification Number
- Returns

(c) CUSTOMS

- Introduction
- Scope of Custom Laws
- Important Definition
- Functions of Custom Department
- Taxable event for Import/Export of Goods
- Different Types of Custom Duty
- Basic Custom Duty
- Significance of IGST
- Anti-Dumping Duty
- Safeguard Duty
- Protective Duty
- Valuation
- Transaction Value
- Convert Transaction value into Indian Currency
- Self-assessment of Custom Duty



Paper IV: Statutory Compliance

- Import Procedure
- Export Procedure
- Baggage
- Exemptions
- Refunds

(d) INCOME TAX

- Origin and Basic Concept
- Origin of the Statute and Act in vogue
- Basic Concepts
- Income-tax Liability
- Assessment Year
- Previous Year
- Person
- Assessee
- Income
- Calculation of Income-tax
- Residential status
- Income Exempted from Tax
- Exemptions under the head Salary
- Exemptions under the head Income from House Property
- Exemptions under the head Profits and Gains of Business or Profession
- Exemptions under the head Capital Gains
- Exemptions under the head Other Income
- Exemption to EOU/SEZ
- Miscellaneous
- Salary Income
- Income under the head 'salary'
- Elements of Salary
- Exemptions
- Valuation of perquisites.
- Income from House Property
- Profit and Gains of Business and Profession
- Capital Gains
- Income from Other Sources
- Assessments
- Tax Deduction at Sources (TDS)
- Returns



(e) TAX INVOICE, CREDIT AND DEBIT NOTES

- Invoice under GST
- Importance of Tax Invoice under GST
- Contents
- Contents of Tax Invoice
- Contents of Bill of Supply
- Contents of Receipt Voucher
- Contents of Refund Voucher
- Contents of Payment Voucher
- Contents of Revised Tax Invoice
- Provisions regarding Tax Invoice in special cases given under Rule 54
- Provisions of Transportation of Goods without issue of Invoice
- Interest is Applicable under GST
- Provisions Pertaining to Collection of Tax and its Indication in Invoice [Secs. 32 and 33]
- Credit and Debit Notes
- Basic Features of GST Return Mechanism
- Matching, Reversal and Reclaim of Input Tax Credit
- Electronic Liability Ledger
- Electronic Credit Ledger
- Electronic Cash Ledger
- Types of Assessments
- Penalties Under GST
- Audit In GST



CONTENTS

STUDY NOTE – 1 : CONCEPT OF TAXATION

1.1	Constitution of India	11
1.2	Taxation Under Constitution	12
1.3	Direct and Indirect Taxes.....	14
1.4	Constitutional Amendment.....	14
1.5	Taxes to be subsumed under GST	15
1.6	Information on Website.....	16

STUDY NOTE – 2 : GOODS AND SERVICES TAX

2.1	Introduction to Goods and Services Tax (GST).....	17
2.2	Taxes Under GST.....	25
2.3	Registration.....	26
2.4	Supply.....	28
2.5	Input Tax Credit.....	38
2.6	Payment of Taxes.....	44
2.7	Returns.....	46

STUDY NOTE – 3 : CUSTOMS LAW

3.1	Introduction	49
3.2	Scope of Custom Laws.....	50
3.3	Important Definitions	51
3.4	Functions of Custom Department.....	52
3.5	Taxable event for Import/Export of Goods	52
3.6	Different Types of Custom Duty.....	53
3.7	Valuation	57
3.8	Import Procedures.....	61
3.9	Export Procedure.....	62
3.10	Baggage.....	62
3.11	Different Exemptions from Customs Duty.....	64
3.12	Refunds	65



STUDY NOTE – 4 : INCOME TAX

4.1	Origin and Basic Concept	67
4.2	Income Exempted from Tax.....	71
4.3	Salary Income	75
4.4	Income from House Property	79
4.5	Profit and Gains of Business and Profession	80
4.6	Capital Gains.....	84
4.7	Income from Other Sources.....	87
4.8	Assessments	88
4.9	Tax Deduction at Sources (TDS)	96
4.10	Returns.....	99

STUDY NOTE – 5 : TAX INVOICE, CREDIT AND DEBIT NOTES

5.1	Invoice under GST.....	101
5.2	Importance of Tax Invoice under GST	102
5.3	Contents	103
5.4	Provisions Regarding Tax Invoice in Special Cases given under Rule 54	107
5.5	Provisions of Transportation of Goods without issue of Invoice	107
5.6	Interest Applicable under GST	108
5.7	Provisions Pertaining to Collection of Tax and its Indication in Invoice	108
	[Secs. 32 and 33]	
5.8	Credit and Debit Notes	108
5.9	Basic features of GST Return Mechanism.....	109
5.10	Matching, Reversal and Reclaim of Input Tax Credit	111
5.11	Electronic Liability Ledger	112
5.12	Electronic Credit Ledger.....	113
5.13	Electronic Cash Ledger.....	114
5.14	Types assessments	115
5.15	Penalties under GST.....	116
5.16	Audit in GST.....	117



STUDY NOTE – 1

CONCEPT OF TAXATION

This Study Note includes:

- Constitution of India
- Taxation Under Constitution
- Direct and Indirect Taxes
- Constitutional Amendment
- Taxes to be subsumed under GST
- Information on Website

1.1 CONSTITUTION OF INDIA

The Constitution of India which came into force with effect from 26th January 1950 is the foundation and source of power to all laws in India. All existing laws and Government actions are subordinate to our Constitution. It is, therefore, necessary to understand the background of our Constitution in order to understand and appreciate the statutes enacted thereunder.

Clear understanding of concepts is vital for any discussion on taxation matters as power to levy and collect tax is derived from Constitution. If it is found that any Act, Rule, Notification or Government Order is not according to the Constitution, it is illegal and void and it is called *ultra vires* the Constitution.

1.1.2 STRUCTURE OF INDIAN STATE

India is a Union of States and federal in structure. Our Constitution generally follows British pattern, though concepts of federal structure are borrowed from American and other constitutions.

1.1.3 POWER OF THE UNION AND STATES & UNION TERRITORIES

Government of India (Union or Central Government) has certain powers in respect of the whole country. India is divided into various States and Union Territories and each State/ Union Territory (UT) has certain powers in respect of that particular State/UT. There are 28 States and 8 Union Territories in India.

1. Article 1(1) of the Constitution of India



1.1.4 ORGANS OF POWER

The three pillars of our constitution are the legislature, executive and judiciary. Our Constitution endeavours to maintain a balance among these three organs whereby the legislature (Parliament and State Assemblies) enact the laws, the Executive implements the laws and the judiciary interprets the laws and settles disputes whenever there is a conflict.

1.1.5 LEGISLATURE

Lok Sabha, known as lower house, consisting of members elected directly by people and Rajya Sabha consisting of members indirectly elected and nominated are the legislative houses of Union of India that enact laws concerning the whole of India. Every State has its own Legislative Assembly with directly elected members like Lok Sabha and six out of the 28 States have their Upper Houses known as Legislative Councils. Of the eight Union Territories, presently three (NCT of Delhi, Puducherry and Jammu & Kashmir have their own Legislative Assemblies and the rest are directly administered by the Centre through Lt Governors appointed by the President of India.

1.1.6 EXECUTIVE – ADMINISTRATION OF UNION/STATE GOVERNMENT

President is the Constitutional Head of India and the Central Government is administered by an elected Government wherein the Prime Minister assisted by his Cabinet manages the affairs of the country. The Governor or Lt Governor appointed by the President is the Constitutional Head of each State/UT. The Union Territories not having its own Legislative Assembly is directly managed by the Centre through the Lt Governors or Administrators appointed by the President of India. The affairs of States/UT having its own Legislatures are managed by a Chief Minister assisted by his Cabinet.

1.1.7 JUDICIARY

There are 25 High Courts in India. High Courts are the apex courts at the State/UT Level. While most of the States have their own High Courts, some of them and some Union Territories fall under the jurisdiction of High Courts in the States contiguous to them. UT of NCT of Delhi has its own High Court. Matters not settled by the High Courts can be taken to the Supreme Court of India which is located in the NCT of Delhi, whose decision is final and binding on all concerned.

1.2 TAXATION UNDER CONSTITUTION

In the basic scheme of taxation in India

- Central Government gets tax revenue from Income Tax (except on Agricultural Income), Excise Duty (except on alcoholic drinks) and Customs Duty.
- State Governments get tax revenue from VAT (Sales Tax), Excise on liquor and tax on Agricultural Income.
- Municipalities get tax revenue from house property.



Study Note - 1 : Concept of Taxation

Income Tax, Central Excise and Customs are administered by Central Government. As regards Sales Tax, Central sales Tax (CST) was levied by Central Government on inter-state sales while State Sale Tax (VAT) was levied by individual State Government. Though CST was levied by Central Government, it was administered by State Government and tax collected in each State was retained by that State Government itself.

By virtue of powers conferred by Article 246 of the Constitution of India–

- Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I (Union List) in the Seventh Schedule to Constitution.
- Legislature of any State has exclusive power to make laws for such State or part thereof with respect to any matter enumerated in List II (State List) of seventh Schedule to constitution.
- Both Parliament and Legislature of any State have power to make laws with respect to any of the matters enumerated in List III (Concurrent List) in the Seventh Schedule to Constitution.
- Parliament has power to make laws with respect to any matter for any part of 'the territory of India not included in a State' (Union Territories) notwithstanding the fact that such matter is enumerated in the State List.

List I or Union List contains entries like Defence of India, Foreign Affairs, War and Peace, Railways, Banking, etc. Entries in this list relevant to taxation are as follows:

Entry No.	Particulars
82	Tax on income other than agricultural income
83	Duties of customs including export duties
84	Duties of excise on the following goods manufactured or produced in India, namely- (a) petroleum crude; (b) high speed diesel; (c) motor spirit (commonly known as petrol); (d) natural gas; (e) aviation turbine fuel; and (f) tobacco and tobacco product
85	Corporation tax
92A	Taxes on the Sale or purchase of goods other than newspaper, where such sale or purchase takes place in the course of Interstate trade or commerce
92B	Taxes on Consignment of goods where such consignment take place during Interstate trade or commerce
97	Any other matter not included in List II, List III and any tax not mentioned in list II or III (These are called 'Residual Powers')



List II or State List contains entries like Police, Prisons, Public health, Intoxicating drinks, Land revenue etc. Entries in this list relevant to taxation are as follows:

Entry No.	Particulars
46	Taxes on agricultural income
51	Excise duty on alcoholic liquors, opium and narcotics

1.3 DIRECT AND INDIRECT TAXES

1.3.1 NEED FOR TAXATION

Government needs funds for various purposes like maintenance of law and order, defence, social/health services, creation and development of infrastructure, education etc. Government generates funds from various sources, of which taxation is a major source. Justice Holmes of US Supreme Court, has, long ago, rightly said that tax is the price which we pay for a Civilized Society. – view echoed in *Parashuram Pottery Works Co. Ltd. v. ITO* (1977) 106 ITR 1 (SC).

1.3.2 CLASSIFICATION OF TAXES

Taxes are fall under two broad classifications, viz., Direct Taxes and Indirect Taxes. Broadly speaking, direct taxes are those which are paid after the income reaches in the hands of tax payer; while indirect taxes are paid before the goods/services reach in the hands of tax payer.

1.3.3 DIRECT TAXES

Income tax is perfect example of direct tax which is paid by the tax-payer directly from his income. Important direct taxes are Income Tax and Gift Tax.

1.3.4. INDIRECT TAXES

These are taxes which the tax payer pays indirectly, i.e., while purchasing goods and commodities, paying for services etc. Important indirect taxes are Excise Duty, Custom Duty and GST (Good & Services Tax).

1.4 CONSTITUTIONAL 101st AMENDMENT

Currently, the fiscal powers between the Centre and the States are clearly demarcated in the Constitution with almost no overlap between the respective domains. The Centre has the powers to levy tax on the manufacture of goods (except alcoholic liquor for human consumption, opium, narcotics etc.) while the States have the powers to levy tax on the sale of goods. In the case of inter-State sales, the Centre had the power to levy a tax (the Central Sales Tax) but, the tax was collected and retained entirely by the States. As for services, it was the Centre alone that was empowered to levy service tax.



Study Note - 1 : Concept of Taxation

Introduction of the GST required amendments in the Constitution so as to simultaneously empower the Centre and the States to levy and collect this tax. The Constitution of India has been amended by the Constitution (one hundred and first amendment) Act, 2016 recently for this purpose. Article 246A of the Constitution empowers the Centre and the States to levy and collect the GST

1.5 TAXES TO BE SUBSUMED UNDER GST

The GST would replace the following taxes:

1. taxes currently levied and collected by the Centre:
 - (a) Central Excise duty
 - (b) Duties of Excise (Medicinal and Toilet Preparations)
 - (c) Additional Duties of Excise (Goods of Special Importance)
 - (d) Additional Duties of Excise (Textiles and Textile Products)
 - (e) Additional Duties of Customs (commonly known as CVD)
 - (f) Special Additional Duty of Customs (SAD)
 - (g) Service Tax
 - (h) Central Surcharges and Cesses so far as they relate to supply of goods and services
2. State taxes that would be subsumed under the GST are:
 - (a) State VAT
 - (b) Central Sales Tax
 - (c) Luxury Tax d. Entry Tax (all forms)
 - (d) Entertainment and Amusement Tax (except when levied by the local bodies)
 - (e) Taxes on advertisements
 - (f) Purchase Tax
 - (g) Taxes on lotteries, betting and gambling
 - (h) State Surcharges and Cesses so far as they relate to supply of goods and services

The GST Council shall make recommendations to the Union and States on the taxes, cesses and surcharges levied by the Centre, the States and the local bodies which may be subsumed in the GST.



1.6 INFORMATION ON WEBSITES

Website is a good source for obtaining information on laws. Some important and useful sites are as follows –

www.indiaimage.nic.in – Gateway to Government of India information over web [Also see www.goidirectory.nic.in (free website)]

www.cbic.gov.in – site of Central Board of Excise and Customs (CBEC), giving notifications and circulars and general information on excise, customs law and service tax. (Free website)

www.incometaxindia.gov.in – Site of Income Tax Department – provides various facilities and information (free website)

www.rbi.org.in – Reserve Bank of India website (free website)

www.taxmann.com – Information on changes in corporate laws and taxation. (Paid website)

www.dateyvs.com – Updates on corporate laws and taxation. Past question papers of professional examinations on corporate laws and taxation. Links to other useful sites (free website)

www.ieport.com – Information on Foreign Trade Policy, Customs law. (Free website)

www.icegate.com – Foreign Trade Policy, Customs Law www.eximkey.com – Foreign Trade Policy, Customs Law

www.taxindiaonline.com – Website covering direct and indirect taxes (paid website, but some portion free)

www.judis.nic.in – Database of Supreme Court and High Court judgments.

www.stpam.org – Site of Sales Tax Practitioners Association of Maharashtra (STPAM), giving information on CST and Maharashtra Sales Tax (free website).

www.judis.nic.in – SC and HC judgments. Free website <http://en.wikipedia.org> – Dictionary – also www.webopedia.com <http://servicetaxdelhi.gov.in> – Website of Commissioner, Service Tax Delhi.

STUDY NOTE – 2

GOODS AND SERVICES TAX

This Study Note includes:

- Introduction to Goods and Services Tax (GST)
- Taxes Under GST
- Registration
- Supply
- Input Tax Credit
- Payment of Taxes
- Returns

2.1. INTRODUCTION TO GOODS AND SERVICES TAX (GST)

The introduction of Goods and Services Tax (GST) is a very significant step in the field of indirect tax reforms in India. By amalgamating a large number of Central and State taxes into a single tax, it has mitigated cascading or double taxation in a major way and paved the way for a common national market. From the consumer point of view, the biggest advantage would be in terms of a reduction in the overall tax burden on goods or services, which was estimated to be around 25% to 30%. Introduction of GST would also make Indian products competitive in the domestic and international markets. Studies show that this would have a boosting impact on economic growth. Because of its transparent and self-policing character, GST would be easier to administer.

The idea of moving towards the GST was first mooted by the then Union Finance Minister in his Budget for 2006-07. Initially, it was proposed that GST would be introduced from 1st April, 2010. The Empowered Committee of State Finance Ministers (EC) which had formulated the design of State VAT was requested to come up with a roadmap and structure for the GST. Joint Working Groups of officials having representatives of the States as well as the Centre were set up to examine various aspects of the GST and draw up reports specifically on exemptions and thresholds, taxation of services and taxation of inter-State supplies. Based on discussions within and between it and the Central Government, the EC released its First Discussion Paper (FDP) on GST in November, 2009. This spells out the features of the proposed GST and has formed the basis for discussion between the Centre and the States so far.



Constitution (101st) Amendment Act, 2016

To address all these and other issues, the Constitution (122nd Amendment) Bill was introduced in the 16th Lok Sabha on 19.12.2014. The Bill provided for a levy of GST on supply of all goods or services except for Alcohol for human consumption. The tax shall be levied as Dual GST separately but concurrently by the Union (central tax - CGST) and the States [including Union Territories with legislatures) (State tax - SGST)/Union territories without legislatures (Union territory tax- UTGST)]. The Parliament would have exclusive power to levy GST (integrated tax - IGST) on inter-State trade or commerce (including imports) in goods or services. The Central Government will have the power to levy excise duty in addition to the GST on tobacco and tobacco products. The tax on supply of five specified petroleum products namely crude, high speed diesel, petrol, Aviation Turbine Fuel (ATF) and natural gas would be levied from a later date on the recommendation of GST Council.

A Goods and Services Tax Council (GSTC) shall be constituted comprising the Union Finance Minister, the Minister of State (Revenue) and the State Finance Ministers to recommend on the GST rate, exemption and thresholds, taxes to be subsumed and other features. This mechanism would ensure some degree of harmonization on different aspects of GST between the Centre and the States as well as across States. One half of the total number of members of GSTC would form quorum in meetings of GSTC. Decision in GSTC would be taken by a majority of not less than three-fourth of weighted votes cast. Centre and minimum of 20 States would be required for majority because Centre would have one-third weightage of the total votes cast and all the States taken together would have two-third of weightage of the total votes cast.

The Constitution Amendment Bill was passed by the Lok Sabha in 6th May, 2015. The Bill was referred to the Select Committee of Rajya Sabha on 12.05.2015. The Select Committee had submitted its Report on the Bill on 22.07.2015. The Bill with certain amendments was finally passed in the Rajya Sabha and thereafter by Lok Sabha in 8th August, 2016. Further the bill had been ratified by required number of States and received assent of the President on 8th September, 2016 and has since been enacted as Constitution (101st Amendment) Act, 2016 w.e.f. 16th September, 2016.

2.1.1. Key Concepts:

Before introduction of GST, the structure of indirect taxes was that central excise duty and service tax was imposed by the Central Government and VAT and Entry Tax was imposed by State Government. There is multiplicity of taxes in India. There was a cascading effect of taxes i.e. tax on tax at the various stages. In many cases, same transaction was taxed by both Central and State Governments. Government had find solution in the form of GST to get over the many defects in present system of indirect taxes.

Kelkar committee in the year 2004 has first mooted the idea of national GST. This committee has recommended the concept of national GST, since than various steps were taken over the years.



Study Note - 2 : Goods and Service Tax

The Constitution of India has been amended from 16th September, 2016 to make the provision for introduction of GST.

2.1.2. GST Council

GST council is the main decision making body, which is formed to finalized the design of Goods and Services Tax. It is a Governing body and Union Finance Minister is the chairman of this council, it also includes the Minister of State (Revenue) and the State Finance/Taxation Ministers. The GST council will make recommendation on:

- Taxes, cesses and surcharges to be subsumed under GST;
- Goods and services, which may be taxed to, or exempt from GST;
- The threshold limit of turnover for application of GST;
- Rates of GST;
- Model GST laws, principles of levy, apportionment if IGST and principles that governs the place of supply;
- Rates including floor rates with bands of GST;
- Special provisions with respect to the special categorh States like Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh, Jammu and Kashmir, and Uttarakhand; and
- Other related matters.

2.1.3. Salient Features of GST

The salient features of GST are as under:

- GST is applicable on "supply" of goods or services as against the earlier concept of tax on the manufacture of goods or on sale of goods or on provision of services.
- GST is based on the principle of destination based consumption taxation as against the earlier principle of origin based taxation.
- It is a dual GST with the Centre and the States simultaneously levying it on a common base. The GST to be levied by the Centre is called Central GST (CGST) and that is levied by the States [including Union territories with legislature] is called State GST (SGST). Union territories without legislature levy Union Territory GST (UTGST).
- An Integrated GST (IGST) is levied on inter-State supply (including stock transfers) of goods or services. This is collected by the Centre so that the credit chain is not disrupted.
- Import of goods is treated as inter-State supplies and is subject to IGST in addition to the applicable customs duties.



- Import of services is treated as inter-State supplies and is subject to IGST.
- CGST, SGST/UTGST & IGST is levied at rates to be mutually agreed upon by the Centre and the States under the aegis of the GSTC.
- GST replaced the following taxes levied and collected by the Centre earlier:
 - Central Excise Duty;
 - Duties of Excise (Medicinal and Toilet Preparations);
 - Additional Duties of Excise (Goods of Special Importance);
 - Additional Duties of Excise (Textiles and Textile Products);
 - Additional Duties of Customs (commonly known as CVD);
 - Special Additional Duty of Customs (SAD);
 - Service Tax;
 - Cesses and surcharges insofar as they relate to supply of goods or services.
- State taxes that subsumed within the GST are:
 - State VAT;
 - Central Sales Tax;
 - Purchase Tax;
 - Luxury Tax;
 - Entry Tax (All forms);
 - Entertainment Tax (except those levied by the local bodies);
 - Taxes on advertisements;
 - Taxes on lotteries, betting and gambling;
 - State cesses and surcharges insofar as they relate to supply of goods or services.
- GST will apply to all goods and services except Alcohol for human consumption.
- GST on five specified petroleum products (Crude Oil, Petrol, Diesel, Aviation Turbine Fuel & Natural gas) would be applicable from a date to be recommended by the GSTC.
- Tobacco and tobacco products would be subject to GST. In addition, the Centre would continue to levy Central Excise duty.
- A common threshold exemption would apply to both CGST and SGST. Taxpayers with an annual turnover of Rs.20 lakh (Rs.10 lakh for special category States as specified in article 279A of the Constitution) are exempt from GST. A compounding option (i.e. to pay

Study Note - 2 : Goods and Service Tax

tax at a flat rate without credits) is available to small taxpayers (including to specified category of manufacturers and service providers) having an annual turnover of up to Rs.1.5 Crore. The threshold exemption and compounding scheme would be optional.

- The list of exempted goods and services would be kept to a minimum and it would be harmonized for the Centre and the States as well as across States as far as possible.
- Exports would be zero-rated.
- Credit of CGST paid on inputs may be used only for paying CGST on the output and the credit of SGST/UTGST paid on inputs may be used only for paying SGST/UTGST. In other words, the two streams of input tax credit (ITC) cannot be cross utilized, except in specified circumstances of inter- State supplies for payment of IGST. The credit would be permitted to be utilized in the following manner:
 - ITC of CGST allowed for payment of CGST & IGST in that order;
 - ITC of SGST allowed for payment of SGST & IGST in that order;
 - ITC of UTGST allowed for payment of UTGST & IGST in that order;
 - ITC of IGST allowed for payment of IGST, CGST & SGST/UTGST in that order.
 - ITC of CGST cannot be used for payment of SGST/UTGST and vice versa.
- **Section 49A** : Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment."
- **"ORDER OF UTILISATION OF INPUT TAX CREDIT"**

Section 49B : Notwithstanding anything contained in this Chapter and subject to the provisions of clause (e) and clause (f) of sub-section (5) of section 49, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax."

Output Liability	First set off	Next set off	Not allowed to set off
IGST	IGST	CGST & SGST/UTGST	-
CGST	IGST	CGST	SGST/UTGST
SGST	IGST	SGST	CGST
UTGST	IGST	UTGST	CGST



- Accounts would be settled periodically between the Centre and the State to ensure that the credit of SGST used for payment of IGST is transferred by the originating State to the Centre. Similarly the IGST used for payment of SGST would be transferred by Centre to the Destination State. Further the SGST portion of IGST collected on B2C supplies would also be transferred by Centre to the Destination State. The transfer of funds would be carried out on the basis of information contained in the returns filed by the taxpayers.
- Input Tax Credit (ITC) to be broad based by making it available in respect of taxes paid on any supply of goods or services or both used or intended to be used in the course or furtherance of business.
- Electronic filing of returns by different class of persons at different cut-off dates.
- Various modes of payment of tax available to the taxpayer including internet banking, debit/credit card and National Electronic Funds Transfer (NEFT)/Real Time Gross Settlement (RTGS).
- Obligation on certain persons including government departments, local authorities and government agencies, who are recipients of supply, to deduct tax at the rate of 1% from the payment made or credited to the supplier where total value of supply, under a contract, exceeds two lakh and fifty thousand rupees.
- Refund of tax to be sought by taxpayer or by any other person who has borne the incidence of tax within two years from the relevant date.
- Obligation on electronic commerce operators to collect 'tax at source', at such rate not exceeding one per cent (1%) of net value of taxable supplies, out of payments to suppliers supplying goods or services through their portals.
- System of self-assessment of the taxes payable by the registered person.
- Audit of registered persons to be conducted in order to verify compliance with the provisions of Act.
- Limitation period for raising demand is three (3) years from the due date of filing of annual return or from the date of erroneous refund for raising demand for short- payment or non-payment of tax or erroneous refund and its adjudication in normal cases.
- Limitation period for raising demand is five (5) years from the due date of filing of annual return or from the date of erroneous refund for raising demand for short- payment or non-payment of tax or erroneous refund and its adjudication in case of fraud, suppression or willful mis-statement.

Study Note - 2 : Goods and Service Tax

- Arrears of tax to be recovered using various modes including detaining and sale of goods, movable and immovable property of defaulting taxable person.
- Officers would have restrictive powers of inspection, search, seizure and arrest.
- Goods and Services Tax Appellate Tribunal would be constituted by the Central Government for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority. States would adopt the provisions relating to Tribunal in respective SGST Act.
- Provision for penalties for contravention of the provision of the proposed legislation has been made.
- Advance Ruling Authority would be constituted by States in order to enable the taxpayer to seek a binding clarity on taxation matters from the department. Centre would adopt such authority under CGST Act.
- An anti-profiteering clause has been provided in order to ensure that business passes on the benefit of reduced tax incidence on goods or services or both to the consumers.
- Elaborate transitional provisions have been provided for smooth transition of existing taxpayers to GST regime.

2.1.4. Benefits of GST: Make in India:

- Will help to create a unified common national market for India, giving a boost to Foreign investment and "Make in India" campaign;
- Will prevent cascading of taxes as Input Tax Credit will be available across goods and services at every stage of supply;
- Harmonization of laws, procedures and rates of tax;
- It will boost export and manufacturing activity, generate more employment and thus increase GDP with gainful employment leading to substantive economic growth;
- Ultimately it will help in poverty eradication by generating more employment and more financial resources;
- More efficient neutralization of taxes especially for exports thereby making our products more competitive in the international market and give boost to Indian Exports;
- Improve the overall investment climate in the country which will naturally benefit the development in the states;
- Uniform SGST and IGST rates will reduce the incentive for evasion by eliminating rate arbitrage between neighbouring States and that between intra and inter-State sales;



- Average tax burden on companies is likely to come down which is expected to reduce prices and lower prices mean more consumption, which in turn means more production thereby helping in the growth of the industries. This will create India as a “Manufacturing hub”.

2.1.5. Ease of Doing Business:

- Simpler tax regime with fewer exemptions;
- Reductions in the multiplicity of taxes that are at present governing our indirect tax system leading to simplification and uniformity;
- Reduction in compliance costs - No multiple record keeping for a variety of taxes so lesser investment of resources and manpower in maintaining records;
- Simplified and automated procedures for various processes such as registration, returns, refunds, tax payments, etc;
- All interaction to be through the common GSTN portal so less public interface between the taxpayer and the tax administration;
- Will improve environment of compliance as all returns to be filed online, input credits to be verified online, encouraging more paper trail of transactions;
- Common procedures for registration of taxpayers, refund of taxes, uniform formats of tax return, common tax base, common system of classification of goods and services will lend greater certainty to taxation system;
- Timelines to be provided for important activities like obtaining registration, refunds, etc;
- Electronic matching of input tax credits all across India thus making the process more transparent and accountable.

Benefits to Consumers:

- Final price of goods is expected to be lower due to seamless flow of input tax credit between the manufacturer, retailer and service supplier;
- It is expected that a relatively large segment of small retailers will be either exempted from tax or will suffer very low tax rates under a compounding scheme purchases from such entities will be costless for the consumers;
- Average tax burden on companies is likely to come down which is expected to reduce prices and lower prices mean more consumption.

2.2. TAXES UNDER GST

2.2.1. CENTRAL GOODS AND SERVICES TAX (CGST)

CGST means Central Goods and Services Tax, one of the three categories under GST (CGST, SGST and IGST) with a concept of "one tax one nation". For supply of goods within the state or Union Territory, Central GST will be payable to the Central Government and SGST or UTGST will be payable to State Government. GST council is the Apex Constitutional Body which determines the policies of GST.

2.2.2. STATE GOODS AND SERVICES TAX (SGST)

SGST means State Goods and Services Tax, it is also one of the categories under GST. For supply of goods within the State or Union Territory, the State GST is also applicable. The SGST will be payable to State Government.

2.2.3. UNION TERRITORY GOODS AND SERVICES TAX (UTGST)

In case of Union Territory which do not have legislature, UTGST will be applicable. These are as follows:

- (a) The Andaman and Nicobar Islands;
- (b) Lakshadweep;
- (c) Dadra and Nagar Haveli and Daman and Diu;
- (d) Chandigarh;
- (e) Ladakh; and
- (f) Other territory.

For the purpose of CSGT Act and UTGST Act, each of the territories specified above in will be considered to be a separate Union Territory.

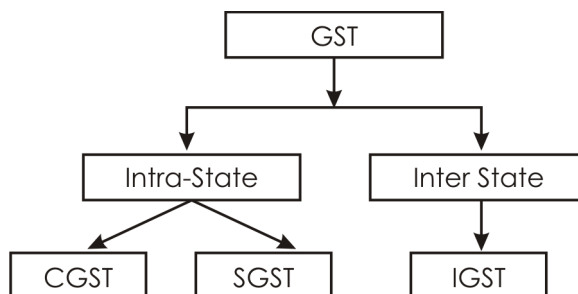
Delhi, Puducherry and Jammu & Kashmir have their own legislature and they have their own SGST Act.

"Other territory" means area inside the sea between 12 nautical miles to 200 nautical miles, if the supply in that area, IGST will be applicable.

In area up to 12 nautical miles, SGST or UTGST will be payable.



2.2.4. INTEGRATED GOODS AND SERVICES TAX (IGST):



In case of supply of goods or services for one state to other states, IGST will apply; it is one of category of GST. IGST is levy and administer by Central Government on every inter-state supply of goods and services.

2.3. REGISTRATION

Registration is the most fundamental requirement for identification of tax payers in any tax system. Registration is required for any business or organisation under the Goods and Services Tax Law, which implies obtaining a unique number from the tax authorities for the purpose of collection of tax on behalf of Government Authorities and to avail the input tax credit on inward supplies. Without registration a person is not able to collect the taxes and also it is impossible to avail the input tax credit without registration.

2.3.1. Threshold for Registration:

Section 22 of the CGST Act, 2017 specifies the list of persons liable for registration and section 24 of the CGST Act, 2017 lists categories of persons who are required specifically to take registration even if they are not covered under section 22 of the Act.

2.3.2. Regular Tax Payer:

A supplier whose aggregate turnover in a financial year exceeds Rs. 20 Lakhs has to mandatorily register under Goods and Service Tax. This limit is set at Rs. 10 Lakhs for North Eastern States, flagged as special category states. Also, the definition of *taxable turnover* has been changed to *aggregate turnover*.

2.3.3. Composition Tax Payer:

GST is set to bring a new regime of tax compliance in India. Large organisations having requisite resources and expert panel to comply these requirements, but on the other hand, many Small and Medium Enterprises (SMEs) may struggle to comply with the provisions of GST. To resolve such type of issues, the Government has introduced Composition Scheme under GST.

When opting for the Composition Scheme under GST, a tax payer will require filing summarised return on quarterly basis, instead of monthly returns (as applicable to other normal businesses).

Study Note - 2 : Goods and Service Tax

Business dealing only in goods having turnover less than Rs.1.5 Crore can only opt for the composition scheme, Service provider (except special scheme for small service provider) have been kept outside the scope of this scheme. However, restaurant operators may also opt for this scheme.

A registered tax payer, who have opted the composition scheme will pay -

Manufacturer & Trader: 1% on Total Turnover of Taxable Supplies (0.5% CGST & 0.5% SGST)

Restaurant sector: 5% of the Turnover (2.5% CGST & 2.5% CGST).

A composition dealer is not allowed to take the input tax credit paid to their suppliers also composition dealer is not allowed to issue tax invoice. However, a composition dealer can issue a bill of supply.

2.3.4. Non Resident Taxable Person:

The Goods and Services Tax Law has defined a 'non-resident taxable person' as any person who occasionally undertakes transactions involving the supply of goods or services, or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India.

In simple words, any and all the businesses which are supplying goods or services or data retrieval services from databases located outside India will fall under this definition and will come under the purview of the Goods and Services Tax law.

Section 24 of the GST law further specifies the requirement for registration for a non- resident taxable person. It mentions certain businesses and entities which are mandatorily required to register under Goods and Services Tax and are not governed by the minimum threshold limit of Rs. 20 lakh/10 lakh. Thus, irrespective of whether the business is involved in a one-time transaction or frequent taxable transactions, every non-resident individual or company will have to obtain a registration under the Goods and Services Tax.

2.3.5. Unique Identification Number:

GSTIN or Goods and Services Tax Identification Number are allotted to regular tax payers required to collect GST and file GST returns. On the other-hand, GST Unique ID is allotted only a certain class of persons notified in the GST Act. Hence, GSTIN and GST Unique ID are different forms of identification under GST.

Who can get the Unique ID: The GST Act states that any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other persons notified by the Commissioner can be granted a GST Unique Identity Number. GST Unique Identity Number can be used for the purposes of claiming GST refund on



notified supplies of goods or services and other purposes as notified by the GST authorities. The application for GST UIN can be made in Form GST REG-13.

2.3.6. Registration Number Format:

Registration number is 15 digit Goods and Services Tax identification number (GSTIN). Before the implementation of GST all the register dealers under VAT were assigned a unique TIN number by the respective state tax authorities. Similarly, service providers were assigned a service tax number by the Central Board of Excise and Taxation (CBEC).

Going forward, in the new GST regime, all the registered tax payers will get consolidated into single platform for compliance and administration purpose and the registration number is also provided by the single authority.

2.3.7. Structure of GSTIN:

Each taxpayer assigned a 15 digit PAN based GSTIN. Format breakdown of GSTIN is given below:

- First two digits represent the state code as per Indian Census 2011. Every state has a unique code. For instance,
 - State code of Uttar Pradesh is 09
 - State code of Karnataka is 29
 - State code of Delhi is 07
- The next ten digits will be the PAN number of the taxpayer
- The thirteenth digit will be assigned based on the number of registration within a state
- The fourteenth digit will be Z by default
- The last digit will be for check code. It may be an alphabet or a number.

2.4. SUPPLY

The term "Supply" has been inclusively defined in the Act. The meaning and scope of supply under GST can be understood in terms of following six parameters, which can be adopted to characterize a transaction as supply.

1. Supply of goods or services. Supply of anything other than goods or services does not attract GST.
2. Supply should be made for a consideration.
3. Supply should be made in the course or furtherance of business.
4. Supply should be made by a taxable person.



Study Note - 2 : Goods and Service Tax

5. Supply should be a taxable supply.
6. Supply should be made within the taxable territory.

While these six parameters describe the concept of supply, there are a few exceptions to the requirement of supply being made for a consideration and in the course or furtherance of business. Any transaction involving supply of goods or services without consideration is not a supply, barring few exceptions, in which a transaction is deemed to be a supply even without consideration. Further, import of services for a consideration, whether or not in the course or furtherance of business is treated as supply.

2.4.1. TIME OF SUPPLY:

Point of taxation means the point of time when goods are deemed to be supplied or the services are deemed to be provided. The point of taxation enables us to determine the rate of tax, value and due dates for payment of taxes.

Under Goods and Services Tax the point of taxation, i.e. the liability to pay taxes, will arise at the time of supply as determined for goods and services. There are separate provisions for time of supply of goods and time of providing services.

How to determine the time of supply:

The time of supply of goods shall be the earlier of the following dates:

- (a) The date of issuing invoice (or the last day by which invoice should have been issued)
- Or
- (b) The date of receipt of payment.

-Whichever is earlier

For (a) and (b) above – The supply shall be assumed to have been made to the extent it is covered by the invoice or the payment (as the case may be).

For (b) – the date of receipt of payment shall be **earlier** of:

1. The date on which it is entered in the books of accounts.
- Or
2. The date on which the payment is credited to the bank account.

Time of supply of services shall be the earliest of the following dates, namely:-

- a) The date of issue of invoice by the supplier

Or

The date of receipt of payment if the invoice is issued within the period prescribed under section 31(2) of CGST Act



- b) The date of completion of service,

Or

The date of receipt of payment if the invoice is not issued within the period prescribed under section 31(2) of CGST Act

- c) The date on which the recipient shows the receipt of services in his books of account, in case where the provisions of clause (a) or clause (b) do not apply.

For (a) and (b) above – The supply shall be assumed to have been made to the extent it is covered by the invoice or the payment (as the case may be).

The date of receipt of payment shall be **earlier** of:

1. The date on which it is entered in the books of accounts.

Or

2. The date on which the payment is credited to the bank account.

Suppose if the supplier receives an extra amount up to Rs.1,000 in excess of the invoice value, the time of supply for the extra amount shall be the date of issue of invoice (at the option of supplier).

2.4.2. VALUE OF SUPPLY:

GST will subsume all taxes in India and will be the one tax. It will bring in “One Nation One Tax” regime in the country.

This is new tax in the country so there are many questions in the mind of tax payers and organisations. In between those questions one of the important question is that what will be the Valuation of supply under GST.

GST will be charged on the Transaction Value. Transaction value is the price actually paid or payable for the supply of goods and for rendering of services between the parties.

The value of supply under GST will include:

1. Any taxes, duties, cess, fees and charges levied under any act, except GST. GST Compensation Cess will be excluded if charged separately by the supplier.
2. Any amount that the supplier is liable to pay which has been incurred by the recipient and is not included in the price.
3. The value will include all incidental expenses in relation to sale such as packing, commission etc.
4. Subsidies linked to supply, except Government subsidies, will be included.
5. Interest/late fee/penalty for delayed payment of consideration will be included.



Study Note - 2 : Goods and Service Tax

2.4.3. PLACE OF SUPPLY:

Place of supply in GST is very important to determine the nature of supply (Inter-State, Intra-State, Import or Export).

Concept of Place of Supply:

Place of supply of goods other than imported or exported goods : Section 10 of the Integrated Goods and Service Tax Act 2017 (IGST), specifies the place of supply, other than the place of supply of imported or exported goods.

2.4.3.1. Inter-state Supply:

When supplier of goods and recipient of goods both are situated in the different states, it is treated as Inter-state supply. For instance, if a supplier of food grain products situated in the state of Haryana supplying the goods to recipient whose place of business is situated in Uttar Pradesh. It will be counted as Inter-State Supply and IGST will be levied.

2.4.3.2. Intra-State Supply:

Under GST, supply of goods and services within the same state or union territory is called Intra-state supply. However, supply of goods and services to special economic zone developer or SEZ unit situated within the same state would not be Intra-state supply. As any supply of goods or services to a Special Economic Zone developer or Special Economic Zone unit is treated as Inter-state supply.

GST Inter-State Vs. Intra-State Supply:

Under GST, interstate supply attracts Integrated Goods and Services Tax (IGST). Intra-state supply attracts both Central Goods and Services Tax (CGST) and State Goods and Services Tax (SGST). In the case of intra-state supply, the GST rate for the goods or services would remain the same. However, the GST rate and tax amount are divided equally into the two heads namely SGST and CGST.

For example, if a Rs. 2,00,000 worth computer is sold by an electronics store in Haryana to a customer in Uttar Pradesh and the applicable GST rate is 18%, then Rs. 36,000 IGST would be applicable. If the laptop is sold by an electronics store in Haryana to a customer in Haryana, then CGST or Rs. 18,000 and SGST or Rs. 18,000 would be applicable.

2.4.3.3. Export of Goods and Services

Under GST Law export of goods and services are treated as:

- Inter-State supplies and covered under the IGST Act.
- 'Zero rated supply' i.e. the goods or services exported shall be relieved of GST levied upon them either at the input state or at the final product stage.



The procedures relating the export have been simplified so as to do away with the paperwork and intervention of the department at various stages of export. The salient feature of the scheme under GST regime as follows:

- The goods and services can be exported either on payment of IGST which can be claimed as refund after the goods have been exported, or under bond or Letter of Undertaking (LUT) without payment of IGST.
- In case of goods and services exported under bond or LUT, the exporter can claim refund of accumulated Input tax credit on account of export.
- In case of goods the shipping bill is the only document required to be filed with the Customs for making exports. Requirement of filing the ARE 1/ARE 2 has been done away with.
- The supplies made for export are to be made under self-sealing and self-certification without any intervention of the departmental officer.
- The shipping bill filed with the Customs is treated as an application for refund of IGST and shall be deemed to have been filed after submission of export general manifest and furnishing of a valid return in Form GSTR-3 or 3B by the applicant.
- The concept of merchant or manufacturer exporter would become irrelevant under the GST regime. The procedure in respect of the supplies made for export is same for both merchant exporter and a manufacturer exporter.

2.4.3.4. Import of Goods:

The import of goods has been defined in the IGST Act, 2017 as bringing goods into India from a place outside India. All imports shall be deemed as inter-State supplies and accordingly Integrated tax shall be levied in addition to the applicable Custom duties. The IGST Act, 2017 provides that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under the Customs Act, 1962. The integrated tax on goods shall be in addition to the applicable Basic Customs Duty (BCD) which is levied as per the Customs Tariff Act. In addition, GST compensation cess, may also be leviable on certain luxury and demerit goods under the Goods and Services Tax (Compensation to States) Cess Act, 2017.

The Customs Tariff Act, 1975 has accordingly been amended to provide for levy of integrated tax and the compensation cess on imported goods. Accordingly, goods which are imported into India shall, in addition to the Basic Customs duty, be liable to integrated tax at such rate as is leviable under the IGST Act, 2017 on a similar article on its supply in India.

Study Note - 2 : Goods and Service Tax

Further, the value of the goods for the purpose of levying integrated tax shall be, assessable value plus Customs Duty levied under the Act, and any other duty chargeable on the said goods under any law for the time being in force as an addition to, and in the same manner as, a duty of customs.

Let's take an example:

Suppose the assessable value of an article imported into India is Rs. 1000/-. Basic Customs Duty is 10% ad-valorem. Integrated tax rate is 18%.

The taxes will be calculated as under:

- Assessable Value= Rs. 1,000/-
- Basic Customs Duty (BCD) = Rs. 100/-
- Value for the purpose of levying integrated tax= Rs. 1,000/- + Rs.100/-= Rs. 1,100/-
- Integrated Tax = 18% of Rs.1,100/- = Rs. 198.00
- Total taxes = Rs. 298.00

On the top of it, in case the goods are also leviable to cess under the Goods and Services Tax (Compensation to States) Cess Act, 2017, the same will be collected on the value taken for levying integrated tax. Thus, in the above example, in case, cess is leviable, the same would be levied on Rs. 1,100/-.

2.4.3.5. Import of Services:

Import of services has specifically been defined under IGST Act, 2017 and refers to supply of any service where the supplier is located outside India, the recipient is located in India, and the place of supply of service is in India.

As per the provisions contained in Section 7(1)(b) of the CGST Act, 2017, import of services under consideration of whether or not in the course or furtherance of business, shall be considered as a supply. Thus, in general, imports of services without consideration shall not be considered as supply. However, business test is not required to be fulfilled for import of service to be considered as supply.

Furthermore, in view of the provisions contained in Schedule I of the CGST Act, 2017, the import of services by a taxable person from a related person or from a distinct person as defined in Section 25 of the CGST Act, 2017, in the course or furtherance of business shall be treated as supply even if it is made without any consideration.

In view of the provisions contained in Section 14 of the IGST Act, 2017, import of free services from Google and Facebook by all of us, without any consideration, are not considered



as supply. Import (Downloading) of a song for consideration for personal use would be a service, even though the same are not in the course or furtherance of business. Import of some services by an Indian branch from their parent company, in the course or furtherance of business, even if without consideration, will be a supply.

Thus, import of services can be considered as supply based on whether there is consideration or not and whether the service is supplied in the course or furtherance of business. The same has been explained in the table below:

Nature of Service	Consideration	Business Test
Import of Service	Necessarily Required	Not Required
Import of Service by a taxable person from a related person or from a distinct person	Not Required	Necessarily Required

As per the provisions contained in Section 21 of the IGST Act, 2017, all imports of services made on or after the appointed day will be liable to integrated tax regardless of whether the transactions for such import of services had been initiated before the appointed day. However, if the tax on such import of services had been paid in full under the existing law, no tax shall be payable on such import under the IGST Act. In case the tax on such import of services had been paid in part under the existing law, the balance amount of tax shall be payable on such import under the IGST Act. For instance, suppose a supply of service for rupees one crore was initiated prior to the introduction of GST, a payment of Rs. 20 lacs has already been made to the supplier and service tax has also been paid on the same, the integrated tax shall have to be paid on the balance Rs.80 lacs.

Section 13 of the IGST Act, 2017 provides for determination of place of supply in cases wherein the location of the supplier of services or the recipient of services is outside India. Thus, this section provides the place of supply in relation to international or cross-border supply of services. Place of supply of a service shall determine as to whether a service can be termed as import or export of service.

2.4.4. Place of supply of goods:

S.No.	Nature of Supply	Location/Place of Supply
2.7.2.1	Supply involves movement of goods (whether by supplier or recipient or by any other person) Sec 10(1)(a) of IGST	Place where movement terminates for delivery to the recipient
2.7.2.2	Goods delivered on the direction of third person Sec 10(1)(b) of IGST	Principal place of business of the third person

Study Note - 2 : Goods and Service Tax

2.7.2.3	Supply does not involve movement of goods Sec 10(1)(c) of IGST	Location of goods at the time of delivery to the recipient
2.7.2.4	Goods assembled or installed at site Sec 10(1)(d) of IGST	Location where goods are taken board
2.7.2.5	Goods supplied on board a conveyance Sec 10(1)(e) of IGST	Location where goods are taken board
2.7.2.6	In any other case Sec. 10(2) of IGST	Place of supply shall be determined in such manner as may be prescribed

2.4.5. Place of Supply of Services:

GST is destination based tax i.e consumption tax, which means tax will be levied where goods and services are consumed and will accrue to that state.

Under GST, there are three levels of Tax, IGST, CGST & SGST and based on the 'place of supply' so determined, the respective tax will be levied. IGST is levied where transaction is inter-state, and CGST & SGST are levied where the transaction is intra-state. For understanding Place of Supply for Services the following two concepts are very important namely:

- Location of the recipient of Service.
- Location of the supplier of Service.

2.4.5.1. General Rule Domestic Transactions

In general, the place of supply for services will be the location of the service recipient (the recipient needs to be a registered person). In cases, where service is provided to an unregistered person, the place of supply will be the:

- Location of the service recipient (if the address is available on record);
- Otherwise, location of service provider

International Transactions

The Place of Supply for services treated as international transactions shall be:

- Location of the service recipient
- In case where the location of service recipient is not available, the place of supply shall be location of the supplier.

2.4.5.2. Exceptions:

As per section 12 of IGST Act 2013 the place of supply of services shall be:



Paper IV: Statutory Compliance

As per section 12 of IGST Act 2017 the place of supply of services shall be:

Section	Type of Service	Place of Supply
Section 12(3) Immovable Property, boat or vessel	(a) services provided by architects, interior decorators or any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work	location at which immovable property or boat or vessel is located or intended to be located
	(a) by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or	
	(a) by way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or	
	(a) any services ancillary to the services referred to in clauses (a), (b) and (c),	
	If immovable property or boat or vessel is located or intended to be located outside India	the place of supply shall be the location of the recipient
	Where the immovable property or boat or vessel is located in more than one State or Union territory	proportionate allocation amongst states as per the value of service received or as per the contract or as may be prescribed
Section 12(4) Specific Services	Services Like beauty parlour, fitness, restaurant, and catering services etc.	Location where the services are actually performed



Study Note - 2 : Goods and Service Tax

Section 12(5) Training and performance appraisal	Made to registered person	Location of such person
	Made to unregistered person	The place where the event is actually performed
Section 12(6) services provided by way of admission to a	A cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto	where the event is actually held or where the park or such other place is located.
Section 12 (7) Organisation of a cultural, artistic, sporting event etc., and services ancillary to organisation of any of the events or assigning of sponsorship of such events	Made to registered person	Location of such person
	Made to unregistered person	The place where the event is actually held
	Event held outside India	Location of the recipient
	Held in more than 1 state	proportionate allocation amongst states as per the value of service received or as per the contract or as may be prescribed
Section 12(8) Transportation of goods, including by mail or courier	Made to registered person	Location of such person
	Made to unregistered person	Location at which such goods are handed over for their transportation
Section 12(9) Passenger transportation service	Made to registered person	Location of such person
	Made to unregistered person	place where the passenger embarks on the conveyance for a continuous journey
Section 12(10) Service on board a conveyance	Services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle	Location of the first scheduled point of departure of that conveyance for the Journey
Section 12(11) Telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person	Fixed Line	Location where the line is installed
	Post Paid	Billing Address
	Pre Paid	Location where the prepaid voucher is sold
	Pre paid sold through internet	Billing Address



Where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be location of the supplier of service.		
Section 12(12) Banking and NBFC service including stock broking services	banking and other financial services, including stock broking services to any person	Location of recipient of service on the records of the supplier of service. Otherwise, Location of supplier of service
Section 12(13) Insurance services	Made to registered person	Location of recipient of Service
	Made to unregistered person	Location of the recipient of services on the records of the supplier of service
Section 12(14) Advertisement services to specified persons	Advertisement services to the Central Government, a State Government, a statutory body or a local authority	Located in each of such states and the value of such supplies specific to each state shall be in proportion to amount attributable to service provided by way of dissemination in the respective states

2.5. INPUT TAX CREDIT

Input tax credit means at the time of paying tax on output, you can reduce the tax you have already paid on inputs.

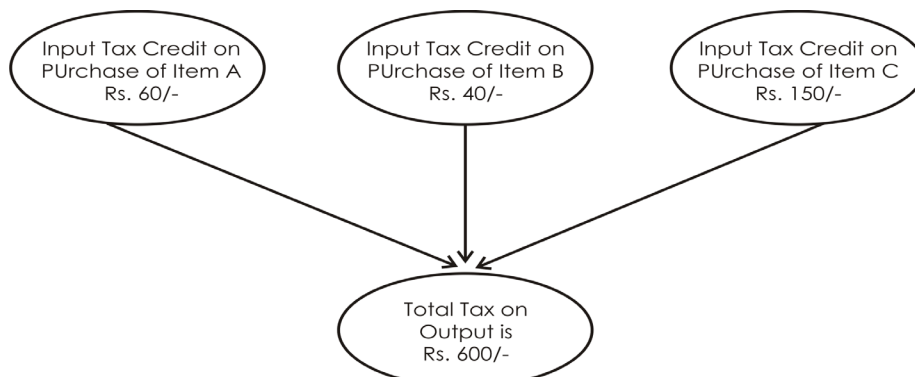
For example, you are manufacturer,

Tax payable on output (Sale) is Rs. 600/- Tax paid on input (Purchase) is Rs. 250/-

You can claim input tax credit of Rs. 250/- and balance Rs. 350/- to be deposited in the account of government.

2.5.1. INPUT TAX CREDIT PROCESS

Input Tax credit can be understood with following chart:



Tax to be paid by manufacturer = Tax on Output – Total Input Tax Credit

$$\text{Rs. 600} - \text{Rs. 250} = \text{Rs. 350}$$

Study Note - 2 : Goods and Service Tax

Input tax credit in GST:

Input Credit Mechanism is available to you when you are covered under the GST Act, Which means if you are a manufacturer, supplier, agent, e-commerce operator, aggregator or any of the persons mentioned here, registered under GST, You are eligible to claim INPUT CREDIT for tax paid by you on your PURCHASES.

How to claim input credit under GST:

A registered taxable person can, subject to the conditions and restrictions as may be prescribed, availed credit of input tax paid by him on any inward supply, to be used or intended to be used in business. No credit will be allowed unless following requirements are fulfilled:

1. You must have a tax invoice (of purchase) or debit note issued by registered dealer (Where goods are received in lots/instalments, credit will be available against the tax invoice upon receipt of last lot or instalment.)
2. You should have received the goods/services (Where recipient does not pay the value of service or tax thereon within 180 days of issue of invoice and he has already availed input credit based on the invoice, the said credit will be added to his output tax liability along with interest.)
3. The tax charged on your purchases has been deposited/paid to the government by the supplier in cash or via claiming input credit.
4. Supplier has filed GST returns (Possibly the most path breaking reform of GST is that input credit is ONLY allowed if your supplier has deposited the tax he collected from you. So every input credit you are claiming shall be matched and validated before you can claim it.)

Therefore, to allow you to claim input credit on Purchases all your suppliers must be GST compliant as well.

Important aspects of claiming Input tax credit:

There is possibility of unclaimed input credit, in some cases the tax on purchase is more than tax on sale. In such a case, you are allowed to carry forward or claim a refund.

If tax on inputs > tax on output → carry forward input tax or claim refund
If tax on output > tax on inputs → pay balance

- No interest is paid on input tax balance by the government
- Input tax credit cannot be taken on purchase invoices which are more than one year old. Period is calculated from the date of the tax invoice.



- Since GST is charged on both goods and services, input credit can be availed on both goods and services (except those which are on the exempted/negative list).
- Input tax credit is allowed on capital goods.
- Input tax is not allowed for goods and services for personal use.
- No input tax credit shall be allowed after GST return has been filed for September following the end of the financial year to which such invoice pertains or filing of relevant annual return, whichever is earlier.

2.5.2. Negative List of Input Tax Credit:

Negative list is the list of goods or services on which input tax credit is not available, which are given below:

1. Motor vehicles for transportation of seating capacity not more 13 persons (including driver) except when they are used for making following taxable supplies, namely:
 - i. Further supply of such vehicles or conveyances; or
 - ii. Transportation of passengers; or
 - iii. Imparting training on driving such motor vehicles;
 - b. For transportation of goods.
2. Vessels and aircraft except when they are used –
 - i. Further supply of such vehicles or conveyances; or
 - ii. Transportation of passengers; or
 - iii. Imparting training on navigating such vessels; or
 - iv. Imparting training on flying such aircraft;
 - b. For transportation of goods.
3. Supply of goods and services namely,
 - a. Food and beverages, outdoor catering etc;
 - b. Membership of a club, health and fitness centre;
 - c. Rent a cab, life insurance and health insurance;
 - d. Travel benefits extended to employees on vacation;



Study Note - 2 : Goods and Service Tax

3. Works contract services when supplied for construction of immovable property on his own account, except where it is an input service for further supply of works contract;
4. Goods or services received by a taxable person for construction of immovable property on his own account, other than plant and machinery, even when used in course of furtherance of business.

Availability of Credit in special circumstances:

A person who has applied for registration within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of GST law.

A person who takes voluntary registration shall be entitled to take credit of input tax in respect of inputs held in stock on the day immediately preceding the date of grant of registration.

Where any registered taxable person ceases to pay tax under composition scheme, he shall be entitled to take credit of input tax in respect of inputs held in stock and on capital goods on the day immediately preceding the date from which he ceases to pay tax under composition scheme.

Where an exempt supply of goods or services by a registered taxable person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable.

2.5.3. Input tax credit utilization under GST Utilization of CGST's Input Tax Credit:

The Input Tax Credit under GST of CGST shall be:

- first utilized towards the payment of output CGST
- and then towards the payment of output IGST

However, Input Tax Credit under GST of CGST can't be used to adjust SGST.

Let us take an illustration to understand:

- Let's assume that the tax credit of Rs. 6,00,000 is available with the supplier and output CGST is Rs. 2,00,000, output IGST is Rs. 3,00,000, and output SGST is Rs. 2,00,000.
- The amount will be reduced from the CGST Account and transferred to the IGST Account in order to avail the benefits of the input tax credit of CGST for paying the IGST as shown in the Monthly Return.



Paper IV: Statutory Compliance

Particulars	Input Tax Credit of CGST	Output CGST	Output IGST	Output SGST
Amount	6,00,000.00	2,00,000.00	3,00,000.00	2,00,000.00
Adjustment of CGST	-2,00,000.00	-2,00,000.00		
Adjustment of IGST	-3,00,000.00		-3,00,000.00	
Balance Credit C/F Output Tax payable in Cash	1,00,000.00	0.00	0.00	2,00,000.00

Utilization of SGST's Input Tax Credit under GST The Input Tax Credit under GST of SGST shall be:

- first utilized towards the payment of output SGST;
- and then towards the payment of output IGST

However, Input Tax Credit under GST of CGST can't be used to adjust CGST. Let us take an illustration to understand:

Let's assume that the tax credit of Rs. 6,00,000 is available with the supplier and output SGST is Rs. 2,00,000, output IGST is Rs. 3,00,000, and output CGST is Rs. 2,00,000.

Now in order to avail the benefits of the tax credit of SGST for paying IGST as shown in the Monthly Return, the amount will be reduced from the SGST Account and transferred to the IGST Account.

Particulars	Input Tax Credit of SGST	Output SGST	Output IGST	Output CGST
Amount	6,00,000.00	2,00,000.00	3,00,000.00	2,00,000.00
Adjustment of SGST	-2,00,000.00	-2,00,000.00		
Adjustment of IGST	-3,00,000.00		-3,00,000.00	
Balance Credit C/F Output Tax payable in Cash	1,00,000.00	0.00	0.00	2,00,000.00

Utilization of IGST's Input Tax Credit under GST The Input Tax Credit under GST of IGST shall be:

- first utilized towards payment of IGST;
 - then towards the payment of output CGST;
 - and then towards the payment of output SGST
- Let us take an illustration to understand:

Let's assume that Input Tax Credit under GST of Rs. 6,00,000 is available with the supplier, and output CGST is Rs. 2,00,000, output IGST is Rs. 3,00,000, and output SGST is Rs. 2,00,000.

Study Note - 2 : Goods and Service Tax

Now in order to avail the benefits of the tax credit of IGST, the Input Tax Credit under GST shall be first adjusted from IGST, then CGST and then SGST.

Particulars	Input Tax Credit of IGST	Output CGST	Output IGST	Output SGST
Amount	6,00,000.00	2,00,000.00	3,00,000.00	2,00,000.00
Adjustment of IGST	-3,00,000.00		-3,00,000.00	
Adjustment of CGST	-2,00,000.00	-2,00,000.00		
Adjustment of SGST	-1,00,000.00			-1,00,000.00
Balance Credit C/F Output Tax payable in Cash	0.00	0.00	0.00	1,00,000.00

2.5.4. Input Tax Credit Reversal

Input tax credit taken by the taxpayer will be liable to reverse under the following circumstances:

- Opted for Composition Scheme:** Where a registered person who availed input tax credit, but opted to pay tax under composition scheme, he shall pay an amount by the way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, calculated in prescribed manner.
- Goods or Services are already supplied but subsequently becomes exempt:** Where a registered person supplies goods and services, but subsequently these goods or services or both supplied by him becomes exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, calculated in a prescribed manner.
- Cancellation of Registration:** In case of registered person whose registration is cancelled, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in a prescribed manner.

Provided that in case of capital goods, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods under section 15, whichever is higher.



Manner of Reversal of Credit:

Following points to be kept in mind while determining the credit which is to be reversed:

- Inputs which are held in stock and inputs which are contained in semi-finished and finished goods held in stock, the input tax credit shall be calculated proportionately on the basis of corresponding invoices on which credit had been availed by the registered taxable person on such input.
- Capital goods which are held in stock, the input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as five years.
- Where the tax invoices related to the inputs held in stock are not available, the registered person shall estimate the amount based on the prevailing market price of goods on the effective date of occurrence of any of the above mentioned events.
- The amount determined in case where person **Opted for Composition Scheme** and where the **Supply of goods or services or both becomes subsequently exempt**, shall form part of the output tax liability of the registered person and the details of the amount shall be furnished in **FORM GST ITC-03** and the details furnished here shall be duly certified by a Practicing Chartered Accountant or Practising Cost Accountant.
- The amount determined in case of **Cancellation of registration** shall form part of the output tax liability of the registered person and the details of the amount shall be furnished in **FORM GSTR-10** and the details furnished here shall be duly certified by a Practicing Chartered Accountant or Practising Cost Accountant.

2.6. PAYMENT OF TAXES

Every registered person under GST is required to compute its tax liability on monthly basis by setting off the Input Tax Credit against the Output Tax Liability. If there is any balance tax liability the same is required to be paid to Government.

There are three ledgers prescribed by the Government which is required to be maintained by each tax payer:

2.6.1. Electronic Liability Ledger:

The electronic tax liability ledger shows the total tax liability of a registered person at any point of time. This detail can be accessed on the GST portal of registered tax payer. The sample format of electronic tax liability ledger is given below:



Study Note - 2 : Goods and Service Tax

Particulars	Amount
Amount of TAX Payable (A)	XXX
Interest, Late Fees (B)	XXX
Amount of Tax payable along with interest on account of mismatch of credit based on provisions of section 29 or Section 29A or Section 43C(C)	XXX
Any other amount payable by the taxpayer or directed by the board on account of any proceeding's carried out (D)	XXX
Tax deduction at Source (E)	XXX
Tax Collection at Source (F)	XXX
Tax payable under Reverse Charge Mechanism (G)	XXX
Amount payable by the department against any interest, refund, penalty, Late fees or any other amount determined under the proceedings under this Act. (H)	XXX
Balance in Electronics Tax Liability Ledger (A+B+C+D+E+F+G+H)	XXXX

2.6.2. Electronic Credit Ledger:

All the taxes paid on the inputs would be recorded in the electronic credit ledger. The input tax credit in each of the cases mentioned below, shall also be transferred to the electronic credit ledger:

- Input Tax Credit (ITC) available to the branch for the amount of credit transferred by ISD (Input Service Distributor)
- Input Tax Credit allowed on input held in stock and the semi-finished or finished goods would be credited to electronic credit ledger if the taxpayer applies for registration within 30 days of becoming liable to pay tax.
- Input Tax Credit available on the input held in stock and semi-finished or finished goods by a taxpayer in the composition scheme converting to a normal taxpayer shall be transferred to electronic credit ledger.
- Input Tax Credit available due to the taxes paid under the reverse charge mechanism shall also be transferred to the electronic credit ledger.
- Input Tax Credit available on goods/services used for the business and other purposes shall only be allowed to the extent applicable for business purposes.

All the payments under GST have to be made by either using the input tax credit available in the electronic credit ledger or through the electronic cash ledger.

**2.6.3. Electronic Cash Ledger:**

An Electronic Cash Ledger will also be maintained on the GST portal. It will display the total amount deposited by the tax payer towards discharge of his tax liability or interest or late fee or penalty any other amounts. Also, it is now mandatory for businesses making payment for more than Rs.10,000 to do it electronically.

2.6.4. Unique Identification Number:

GSTIN or Goods and Services Tax Identification Number are allotted to regular taxpayers required to collect GST and file GST returns. On the other-hand, GST Unique ID is allotted only a certain class of persons notified in the GST Act. Hence, GSTIN and GST Unique ID are different forms of identification under GST.

Who can get the Unique ID: The GST Act states that any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other persons notified by the Commissioner can be granted a GST Unique Identity Number. GST Unique Identity Number can be used for the purposes of claiming GST refund on notified supplies of goods or services and other purposes as notified by the GST authorities. The application for GST UIN can be made in Form GST REG-13.

2.7. RETURNS

A return is a document, which is filed by the taxpayer according to law with the tax administrative authorities. Under Goods and Services Tax law a normal taxpayer will be required to furnish three returns monthly and one annual return. Similarly, there are separate returns for a taxpayer who have opted the composition scheme, taxpayer registered as an input Service Distributor, a persons is liable to deduct or collect the (TDS/TCS).

Type of Returns with Due dates:

Returns	Periodicity/Description	Who is liable to file	Due date for Filing
GSTR-1	Monthly Statement of Outward supplies of goods and/or services	Registered person with annual aggregate turnover greater than Rs.1.5 crore	11th of the next month
	Quarterly Statement of Outward supplies of goods and/or Services	Registered person with annual aggregate turnover up to Rs.1.5 crore	13th of the month succeeding the quarter
GSTR-2	Inward supply of taxable goods and/or services	Registered person	15th of the next month



Study Note - 2 : Goods and Service Tax

GSTR-2A	Monthly read only documents for the ceipient, to verify the details uploaded by the seller in GSTR-1	Registered person	15th of the next month
GSTR-3	Auto populated monthly document based on the details filled in GSTR-1, GSTR-2 and the tax liability of any preceding period	Registered person	20th of the next month
GSTR-3B	Monthly return for a normal taxpayer	Registered person	20th of the next month
GSTR-4	Quarterly Return for a composition dealer	Registered person paying tax under composition scheme	18th April of the next financial year
GSTR-5	Monthly return	Registered non resident Taxpayer	20th of the next month
GSTR-6	Monthly return	Input Service Distributor	13th of the next month
GSTR-7	Monthly return	Tax deductor	10th of the next month
GSTR-8	Monthly return	E-Commerce Operator	10th of the next month
GSTR-9	Annual return	Registered person other than an ISD, tax deductor/tax collector, casual taxable person and a non-resident taxpayer	31st December following the financial year end
GSTR-9A	Annual return for tax payers registered under composition scheme	Composition dealer	31st December following the financial year end
GSTR-9B	Annual return for E-commerce platforms which are required to collect TCS	E-Commerce Operator	31st December following the financial year end
GSTR-9C	Annual return for tax payers who are required to get accounts audited by a CA	Registered person with annual turnover ₹2 crores or more	31st December following the financial year end
GSTR-10	Final return	Taxable person whose registration has been surrendered or cancelled.	Within 3 moths of the date of cancellation or date of order of cancellation, whichever is later.
GSTR-11	Monthly return for Unique Identification number holders	UIN Holders	28th of the next month in which the inward suppliers are received.

STUDY NOTE – 3

CUSTOMS LAW

This Study Note includes:

- Introduction
- Scope of Custom Laws
- Important Definitions
- Functions of Custom Department
- Taxable event for Import/Export of Goods
- Different Types of Custom Duty
- Valuation
- Import Procedures
- Export Procedure
- Baggage
- Different Exemptions from Customs Duty
- Refunds

3.1. INTRODUCTION

Customs duty is one of the oldest forms of taxation in India. Customs duty is a duty or tax, which is levied by Central Government on import of goods into, and export of goods from, India. It is collected from the importer or exporter of goods, but its incidence is actually passed to the ultimate consumer of the goods. Custom Duty is usually levied on *ad valorem* basis and its base is determined by the domestic value of the imported or exported goods calculated at the official exchange rate.

The first legislation on customs in modern India was made by the erstwhile British Government with the enactment of Sea Customs Act, 1878. The first Customs Tariff Act was passed in 1894. Air Customs was covered under the India Aircrafts Act of 1911 and the Land Customs Act was passed in 1924. The Indian Customs Act, 1934, governed the Customs Tariff. After Independence, the Sea Customs Act and other allied enactments were repealed by a consolidating and amending legislation entitled the Customs Act, 1962. Similarly the Act of 1934 was repealed by the Customs Tariff Act, 1975.



Customs Act, 1962 has been enacted by Parliament in exercise of the exclusive power vested in it under Article 246 read with Entry 83 of list-I of the Seventh Schedule of the Constitution.

Section 12 of Customs Act, the charging section, provides that duties of customs shall be levied at such rates as may be specified under 'The Customs Tariff Act, 1975', or any other law for the time being in force, on goods imported into, or exported from, India.

3.2. SCOPE OF CUSTOM LAWS

As seen in the previous paragraph, there are two Acts which form part of Customs Law in India, namely, the Customs Act, 1962 and Customs Tariff Act, 1975.

The Customs Act, 1962 (CA) - CA is the basic Act for levy and collection of customs duty in India. It contains provisions relating to imports and exports of goods and merchandize as well as baggage of persons arriving in India. The main purpose of Customs Act, 1962 is the prevention of illegal imports and exports of goods. The Act extends to the whole of the India, including Jammu & Kashmir and Sikkim.

The Customs Tariff Act, 1975(CTA) -Custom Duty is levied on goods imported or exported from India at the rates specified in CTA. The Act contains two schedules - Schedule 1 gives classification and rate of duties for imports, while schedule 2 gives classification and rates of duties for exports. In the present Act, the Tariff Schedule was replaced in 1986. The new Schedule is based on Harmonized System of Nomenclature (HSN), the internationally accepted Harmonized Commodity Description and Coding System.

Rules under Customs Act – Section 156 of Customs Act empowers the Central Government to make rules, consistent with provisions of the Act, to carry out the purposes of the Act. The Central Government has framed different rules. Some of them are :

Customs Valuation (Determination of value of Imported Goods) Rules, 2007;

Customs Valuation Rules, 1988 (for valuation of imported goods for computing the quantum of duty payable);

Customs and Central Excise Duties Drawback Rules, 1995 (it provides mode of calculating rates of duty drawback on export);

Baggage Rules, 1998 or Baggage (Amendment) Rules 2006 (rules and allowances for bringing in baggage from abroad by Indians and tourists);

Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 (it provides procedure to be followed when goods are imported for export purposes); and Export Manifest (Vessels) Regulations, 1976



Study Note - 3 : Customs Law

Regulations under Customs Act – Under section 157 of Customs Act, the Central Board of Indirect Taxes and Customs (CBIC) has been empowered to make regulations, consistent with provisions of the Act, to carry out of purpose of the Act. Different regulations have been framed within the parameters of these powers. Some of them are:

Project Import Regulations, 1986 (i.e., procedures for project imports); Customs House Agents Licensing Regulation (i.e., regulation of customs house agents). Other regulation have been made (i.e., Import and export report, Import and export manifest, manufacture in warehouse, shipping bill and bill of export).

Circulars and notifications – The Central Board of Indirect Taxes and Customs can issue circulars/Instructions/directions for the purpose of uniformity in classification of goods or with respect to the levy of duty thereon. Besides, the Central Government can issue notification under different sections {for instance, under section 11 the Central Government has power to issue notification to prohibit import or export of goods, under section 11B the Government can specify notified goods, under section 25(1), the Government can grant full or partial exemption from duty }.

3.3. IMPORTANT DEFINATIONS

Baggage - "Baggage" includes unaccompanied baggage but does not include motor vehicle.

Board – It means the Central Board of Indirect Taxes and Customs.

Coastal Goods – Coastal goods means goods, other than imported goods, transported in a vessel from one port in India to another.

Custom Area – Custom area means the area of a custom station or a warehouse and includes any area in which imported goods or export are ordinarily kept before clearance by Custom Authorities.

Custom Station – It means any custom port, [customs airport, international courier terminal, foreign post office] or land customs station.

Export – Export means, with its grammatical variations and cognate expressions means taking out of India to a place outside India.

Import – Import means , with its grammatical variations and cognate expressions means bringing into India to a place outside India.

Goods - Goods includes –

- (a) Vessels, aircraft and vehicles; (b) Stores;
- (c) Baggage;
- (d) Currency and negotiable instruments; and (e) Any other kind of movable property.



It may be noted that for anything to be called as goods, it must be moveable and marketable.

Indian Custom Waters – It is an area beyond 12 nautical miles and up to 24 nautical miles from base line of India.

Exclusive Economic Zone – It extends up to 200 nautical miles from the base line. Beyond 200 nautical miles, the area is known as high seas. All the countries have equal rights into the high seas.

Purpose of Custom Duty

The customs duty is levied, primarily, for the following purpose:

1. To raise revenue.
2. To regulate imports of foreign goods into India.
3. To conserve foreign exchange, regulate supply of goods into domestic market.
4. To provide protection to the domestic industry from unhealthy competition by restricting import of selected goods and services, and outright import ban wherever necessary.

3.4. FUNCTIONS OF CUSTOMS DEPARTMENT

Indian Customs Department handles important tasks. Some of them are given below-

1. Collection of customs duties on imports and exports as per the Customs Act and the Customs Tariff Act.
2. Enforcement of various provisions of the Customs Act governing imports and exports of cargo, baggage, postal articles and arrival and departure of vessels, aircrafts etc.
3. Discharge of agency functions and enforcing prohibitions and restrictions on imports and export under various legal enactments.
4. Prevention of smuggling including interdiction of narcotic drugs trafficking.
5. International passenger clearance.

3.5. TAXABLE EVENT FOR IMPORT/EXPORT OF GOODS

Goods become liable to import duty when there is "import into "India. Goods are liable for export duty when there is "Export from " India.

Taxable event in the case of Import – Import is the completed only when goods crossed the customs barriers. In case of the Import, taxable event is the day of crossing of custom barrier and bill of entry for home consumption is filed. The rate of duty and tariff valuation applicable to imported goods shall be the rate and valuation in force at one of the following dates –



Study Note - 3 : Customs Law

1. **In the case of goods entered for Home Consumption** : Date on which a bill of entry of such goods is presented or Date of entry inwards of the vessel/arrival of the aircraft, whichever is later.
2. **In case of Warehouse goods** : Date of which a bill of entry in respect of such goods is presented for clearance from warehouse for home consumption
3. **Any other case** : Date on which duty is paid.

The above provision are not applicable to baggage and goods imported by post.

Taxable event in the case of Export : As per section 16(1) of the Customs Act, 1962, taxable event arises only when proper officer makes an order permitting clearance (i.e. entry outwards) granted and loading of the goods for exportation took place under Section 51 of the Customs Act, 1962.

3.6. DIFFERENT TYPES OF CUSTOMS DUTY

Different duties are attracted in the case of Import/Export. These are given below –

1. Basic Custom Duty (BCD)
2. IGST
3. GST compensation cess
4. Social Welfare Surcharge (SWS)
5. Anti Dumping Duty
6. Safeguard Duty
7. Protective Duty

3.6.1 BASIC CUSTOM DUTY

It is levied under section 12 of the Custom Act and specified under section 2 of the Custom Tariff Act. It is levied at a percentage of "Value "as determined under section 14 (1). The duty may be fixed on *ad-valorem* basis or specific rate basis. The duty may be a percentage of the value of the goods or at a specific rate. The Central Government has the power to reduce or exempt any goods from these duties. The Central Government has issued a few exemptions Notifications. In case of imports from preferential area, the preferential rate is applicable, if mentioned in the Tariff. If a partial (or full) exemption is granted by a notification, the effective rate would be calculated by taking into consideration the effect of notification.

Determination of duty where goods consist of articles liable to different rates of duty - Sometimes, goods are imported in different packs or sets. Each set contains goods liable for different rates



of customs duty. Import invoice gives a consolidated price. Section 19 of Customs Act provides the following guidelines to determine customs duty

1. If it is possible to produce satisfactory evidence to the Proper Officer regarding break-up of values of different articles, customs duty will be charged at different applicable rates based on such break-up provided by the importer.
2. In case break-up is not available (or the Proper Officer is not satisfied with the evidence given by the importer) and different items are chargeable at different rates, customs duty will be charged at the highest of such rates. In such a case, customs duty will be payable at the highest rate, even on goods not liable for duty.
3. If accessories and spare parts for maintenance/repairing are compulsorily supplied with the article and if no separate charge is made, accessories will be chargeable at the same rate as the article

3.6.2. SIGNIFICANCE OF IGST IN CASE OF IMPORT

Till June 30, 2017, countervailing duty (CVD) equal to excise duty was imposed on goods imported into India. Moreover, special additional duty (special CVD or SAD) of 4 per cent was imposed in lieu of VAT/sales tax.

With effect from July 1, 2017, these duties have been replaced by IGST (barring a few items which are still subject to excise duty even after July 1, 2017)

Applicability of IGST – It is applicable by virtue of section 3(7) of the Customs Tariff Act, 1975. This section has been amended with effect from July 1, 2017. The amended version provides that any article which is imported into India shall be liable to IGST at such rate which is leviable under section 5 of IGST Act on a like article on its supply in India. IGST will be calculated on the aggregate of assessable value and basic customs duty.

Other points – The following other points should be noted –

1. IGST is not payable on baggage.
2. Input tax credit is available pertaining to IGST paid on inward supply.
3. IGST is applicable in case of import of goods and/or services.
4. IGST is payable at the effective GST rate. If an exemption is given on inter-State supply under IGST Act, it will be taken into consideration in calculating IGST for the purpose of import.
5. Sometimes exemption is given under IGST Act subject to fulfilment of certain conditions, which cannot be fulfilled in the case of import of goods/services. Such conditions shall be ignored.

Study Note - 3 : Customs Law

3.6.3. GST COMPENSATION CESS

Under GST regime, Compensation Cess will be charged on luxury products like high-end cars and demerit commodities like pan masala, tobacco and aerated drinks for the period of 5 years in order to compensate states for loss of revenue.

The value of the imported article for the purpose of levying GST Compensation cess shall be, assessable value plus Basic Customs Duty levied under the Act, and any sum chargeable on the goods under any law for the time being in force, as an addition to, and in the same manner as, a duty of customs. These would include anti - dumping and safeguard duties.

3.6.4. SOCIAL WELFARE SURCHARGE

Social Welfare Surcharge @ 10% on the aggregate duties of customs levied at the time of import.

If goods are Gold, silver including that plated with platinum unworth or in semi-manufactured form or in powder form, then SWS to be calculated @3%.

The Social Welfare Surcharge shall be calculated at the rate of 10% on the aggregate of duties and taxes and cesses which are levied and collected by the Central Government in Ministry of Finance (Department of Revenue) under Section 12 of the Customs Act, 1962.

3.6.5. ANTI-DUMPING DUTY

If an article is exported by an exporter/producer from outside India to India at less than its normal value, the Central Government can impose anti-dumping duty on such transaction. It can be imposed by issue of a notification under section 9A of the Customs Tariff Act. This anti-dumping duty cannot exceed "margin of dumping" in relation to such article.

Margin of dumping – Margin of dumping means the difference between "normal value" and "export price" (i.e., the price at which these goods are exported to India).

Normal Value – Normal value means comparable price in ordinary course of trade, for like article, when destined for consumption in the exporting country or territory. If, however, there is no such sale in the ordinary course of trade in the domestic market of the exporting country, or if because of market situation or low volume of sale in the domestic market of the exporting country, a proper comparison is not possible, then any one of the following method can be adopted –

- a. a comparable representative price of the like article exported from the exporting country or territory to an appropriate third country, or
- b. cost of production of such article in the country of origin (including reasonable administrative, selling and general cost) plus reasonable profit.



Export price – Export Price means the price at which goods are exported. If the export price is unreliable due to association or compensatory arrangement between exporter and importer or a third party, export price can be revised on the basis of price at which the imported articles are first sold to an independent buyer or according to rules made for determining margin of dumping.

Other points – The following points should be noted –

1. Anti-dumping duty is generally imposed in cases where Indian manufacturers are manufacturing similar articles.
2. It may be imposed on provisional basis. After anti-dumping duty is finally determined by the Government, any extra amount collected may be refunded or additional amount may be recovered.
3. Anti-dumping duty is exporter specific. If there is no anti-dumping duty on an exporter, no duty is payable.
4. Section 9B(1)(b) of Customs Tariff Act provides restrictions on the power of the Government of imposing anti-dumping duty in the case of import from a WTO member country or from a country with whom India has a most favored nation agreement. In such cases, anti-dumping duty can be imposed only if the Central Government declares that import of such articles in India causes material injury to industry established in India or materially retards the establishment of any industry in India.
5. Order of imposing anti-dumping duty is appealable to Customs Excise and Service Tax Appellate Tribunal (CESTAT).
6. Anti-dumping duty shall be in force for a period of 5 years from the date of its imposition and can be extended for a further period of 5 years.
7. Anti-dumping duty shall not be leviable on articles imported by a 100 per cent EOU unless specifically made applicable for such units as per section 9A.
8. When one country exports goods to another country at a price lower than its normal value, dumping occurs. Since this is an unfair trade practice having a distortive effect as international trade, anti-dumping duty is a measure to rectify the situation arising out of dumping of goods.

3.6.6. SAFEGUARD DUTY

Under section 8B of the Customs Tariff Act, the Central Government can impose safeguard duty. This duty can be imposed on specified imported goods if the Central Government is satisfied that the goods are imported in such increase quantities and under such conditions that they are causing (or threatening to cause) serious injury to domestic industry.

Study Note - 3 : Customs Law

The following points should be noted –

1. For this purpose, a notification has to be issued after conducting an inquiry.
2. The duty, once imposed, is valid for 4 years (it may be revoked earlier). The period of 4 years can be extended by the Central Government. However, the aggregate period cannot be more than 10 years.
3. In case of imports from any developing country, safeguard duty can be imposed only if share of imports from that country exceed 3 per cent of total imports of that article in India. If an article originates from more than one developing countries and if imports from each developing country is less than 3 per cent, safeguard duty can be imposed if imports from all such developing countries taken together exceeds 9 per cent of total imports of that article in India.
4. The Central Government can impose provisional safeguard duty, pending final determination up to 200 days.
5. Safeguard duty is not applicable for imports by EOU or SEZ units (unless the notification imposing safeguard duty specifically provides that it is applicable in such cases as per section 8B).
6. Anti-dumping duty and safeguard duty are not considered for calculating IGST.
7. Safeguard duty is product specific, i.e., it is applicable only for certain articles in respect of which it is imposed.

3.6.7. PROTECTIVE DUTY

As per sections 6 and 7, protective duty is effective from the date specified in the First Schedule of the Customs Tariff Act. It is a duty imposed on imported goods for protection of interests of any industry in India on recommendation of Tariff Commission.

3.7. VALUATION

Customs duty is payable as a percentage of "assessable value". The assessable value may be calculated as follows –

Steps	Particulars	Amount
Step 1	Transaction value (it is FOB and a few adjustments)	XXX
Step 2	Add: Cost of transport, loading, unloading and handling charges associated with the delivery of imported goods to the place of importation	XXX
Step 3	Add: Cost of insurance cover to the place of importation (if cost of insurance cover is not ascertainable, it will be 1.125% of FOB)	XXX
Step 4	Assessable Value (Total of Step 1 + Step 2 + Step 3) (it may be termed as CIF)	XXX



Notes –

1. Cost of transport under Step 2 includes the ship demurrage charges on chartered vessels, lighterage or barge charges.
2. Where the cost referred to in Step 2 is not ascertainable, such cost shall be 20% of the FOB value of goods.
3. In case of goods imported by air, where the cost referred to in Step 2 is ascertainable, such cost shall not exceed 20% of the FOB value of goods.

3.7.1. TRANSACTION VALUE

Transaction value is FOB and a few adjustments. FOB is Free on Board value. FOB is the amount charged by the foreign supplier from the purchaser. It includes charges up to the stage such supplier ships goods and risk is passed to Indian purchaser. Transaction value is calculated under the following situations -

- Situation 1 (when transaction value is not rejected) - It is FOB and a few adjustments as given in rule 10(1) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [hereinafter referred to as Valuation Rules].
- Situation 2 (when transaction value is rejected) - If transaction value is not acceptable, rules 4 to 9 of Valuation Rules will be applied sequentially. Even in this situation, the adjustments given by rule 10(1) are applicable.

When transaction value is not rejected – Transaction value is generally rejected if buyer and seller are related or when price is not sole consideration for sale. There are a few more cases when transaction value may be rejected by customs authorities. These are discussed in Situation 2. If transaction value is not rejected, the following shall be added to the price actually paid or payable for the imported goods. These cases are given in rule 10(1) of Valuation Rules -

- **Cost incurred by buyer but not included** – The following costs incurred by the buyer shall be added to the extent these are not included in price actually paid or payable for the imported goods –
 - a. Commission and brokerage (except buying commissions);
 - b. The cost of containers which are treated as being one for customs purposes with the goods in question;
 - c. The cost of packing whether for labour or materials.
 - d. Value of free/concessional goods or services supplied by buyer to seller. Sometimes the buyer gives certain goods or provides certain services free of charge or at concessional rate to the foreign supplier for getting the imported goods according



Study Note - 3 : Customs Law

to his requirement. Appropriate cost of such goods/services shall be included to the extent such value has not been included in the price actually paid or payable by the buyer. Value of following goods and services are specified for this purpose -

- i. materials, components, parts and similar items incorporated in the imported goods;
 - ii. tools, dies, moulds and similar items used in the production of the imported goods;
 - iii. materials consumed in the production of the imported goods;
 - iv. engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods.
- e. **Royalty/licence fees payable as a condition of sale** – Royalty/licence fees shall be included if these are not included in the price actually paid or payable. However, royalty/licence fees shall be included only if related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included.
- f. **Value of proceeds subsequently accrues to the seller** – The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller. However, it shall be included only if it is not already included in the price paid or payable by the importer.
- g. **Other payments as a condition of sale** – All other payments actually made (or to be made) as a condition of sale of the imported goods, by the buyer to the seller (or by the buyer to a third party) to satisfy an obligation of the seller shall be included. However, it shall be included to the extent such payments are not included in the price actually paid or payable.

When transaction value is rejected – Situation 2 is applicable if transaction value is not acceptable. When transaction value is not acceptable - In the following cases, transaction value may be rejected by appropriate customs authority -

1. There are restrictions as to the disposition or use of the goods by the buyer.
2. Sale price is subject to some condition/consideration for which a value cannot be determined (or price is not sole consideration for sale).
3. Buyer and seller are related.

3.7.2. CONVERT TRANSACTION VALUE INTO INDIAN CURRENCY

Transaction value shall be converted into Indian currency with reference to foreign exchange rate which is enforced on the date on which bill of entry is presented under section 46 or a



shipment bill/bill of export is presented under section 50 of the Customs Act. For this purpose, foreign exchange rate is determined or notified by the Central Board of Indirect taxes and Customs.

3.7.3. SELF-ASSESSMENT OF CUSTOMS DUTY

Self-assessment of customs duty was introduced by the Finance Act, 2011. It is applicable for import and export and the procedure is same for imports and exports. Self-assessment procedure is given in brief –

1. Importer importing goods is required to submit bill of entry under section 46 of the Customs Act. On the other hand, exporter is required to submit shipping bill at the time of export under section 50 of the said Act.
2. Bill of entry/shipping bill should be electronically submitted in all cases (except when manual submission is specifically permitted by Commissioner of Customs).
3. The concerned importer or exporter shall self-assess the duty leviable on such goods.
4. The self-assessment may be verified by proper officer by examining goods or testing goods. The proper officer may examine any contract, broker's note, insurance policy, catalogue or other documents whereby duty payable can be ascertained.
5. On such verification, proper officer may re-assess the bill of entry such re-assessment would be without prejudice to any other action which be taken under the Customs Act.
6. If the importer or exporter accepts in writing the re-assessment made by proper officer about classification/valuation/exemption/concession, no question of issuing any formal order arises. If, however, the importer or exporter does not accept the re-assessment in writing, the proper shall pass a speaking order within 15 days from date of re-assessment of bill of entry or shipping bill, as the case may be.
7. If the goods are not taken for verification of self-assessment, the goods will be allowed to be cleared from customs. Later on, the proper officer may audit the duty assessment. Such audit can be done at the premises of the importer or in the office of proper officer. On the basis of such audit, demand for differential duty and interest can be made. Even penalty can be imposed for short payment.
8. In cases, where the importer or exporter is not able to determine the duty liability/make self-assessment for any reason, a request shall be made to the proper officer for assessment of the same under section 18(1)(a) of the Customs Act. In this situation an option is available to the proper officer to resort to provisional assessment of duty by asking the importer/exporter to furnish security as deemed fit for differential duty equal to duty provisionally assessed and duty finally payable after assessment. This provisions

Study Note - 3 : Customs Law

is to be applied in deserving cases only where importer or exporter is not able to assess the goods for duty for want of certain information,/documents, etc., and not in a routine manner.

9. In both cases, where no self-assessment is done and when self-assessment is done but reassessment is required under section 17, the importer or exporter can opt for provisional assessment of duty by the proper officer of Customs. The difference is that when no self-assessment is done, the provisional assessment shall get converted into final assessment and when self-assessment is done, the provisional assessment shall get converted into reassessment

3.8. IMPORT PROCEDURES

Import procedures are briefly given below –

1. **Import report** – Person in charge of conveyance is required to submit Import Manifest or Import Report. Person in charge means (a) in case of vessel, its master, (b) in case of aircraft, its commander or pilot-in-charge, (c) in the case of train, its conductor or guard, and (d) in case of vehicle or other conveyance - its driver or other person in charge.
2. **Entry inwards/unloading** – After delivery of import manifest, the custom officer shall grant Entry Inwards. Unloading of cargo can start only after Customs Officer grant Entry Inwards. Such entry inwards can be granted only when berthing accommodation is granted to a vessel. If there is heavy congestion at port, shipping berth may not be available, in such case, Entry Inwards cannot be granted. Entry inward is not required for unloading of baggage, mail bags, animals, perishable goods and hazardous goods.
3. **Bill of entry for home consumption** – Importer has to electronically submit Bill of Entry giving details of goods being imported, along with required documents. Bill of Entry is for home consumption. Imported goods are cleared on payment of customs duty.
4. **Bill of entry for warehousing** – The Bill of Entry may be for home consumption or for warehousing. Home consumption means goods are for use or consumption in India. Sometimes, the Indian importer may not immediately require the imported goods for consumption or for resale. In such cases, he can keep those goods in a warehouse without payment of duty. From warehouse goods can be cleared when the importer wants to use it for home consumption or for resale. In such a case, customs duty is payable as per rate of duty prevailing on date on which Bill of Entry for home consumption in respect of such goods is presented.
5. **Self-assessment** – Importer has to file Bill of Entry electronically on Self-Assessment basis. He has to submit documents as per check list and comply with CCR (Compulsory Compliance Requirements). In majority of the cases, duty is payable on self-assessment



basis. Duty can be paid electronically. Verification of self-assessment is done on selective basis by customs officer. If goods are cleared without verification, post clearance audit will be done. Invoices, contract, packing list and other relevant documents are required to be submitted to customs authorities for this purpose.

6. **Demurrage** – Demurrage is payable if goods are not cleared from port/airport within free time (generally within 3-5 working days). If importer do not file bill of entry within 30 days of arrival of goods, the custodian of cargo can resell goods after obtaining necessary permission from customs.

3.9. EXPORT PROCEDURES

Export procedures are briefly given below –

1. **Shipping bill** – Every exporter has to submit Shipping Bill for export by sea or air. In case of export by road, Bill of Export has to be submitted. This formality is required even if no export duty is payable. Shipping Bill has to be submitted electronically.
2. **Self-assessment** – Export duty (if payable) has to be self-assessed. Export duty is levied on a few articles.
3. **Verification** – If the export consignment is selected for verification under Risk Management System, documents are checked. Goods may be inspected and then clearance is given. If export consignment is not selected for verification, its clearance will be allowed on submission of documents as per check list.
4. **Post audit** – If goods are not examined before export, documents are to be submitted for verification and audit after exports.
5. **Export incentives** – If export is under export incentives, relevant documents are checked and certified. Then proof of export is obtained on ARE-1.

3.10. BAGGAGE

Baggage means cases/bags which are used to carry belongs of a passenger. The term baggage has not been defined. The following may be noted –

1. Baggage means all dutiable articles, imported by passenger or a member of a crew in his baggage.
2. Un-accompanied baggage (if dispatched previously or subsequently within prescribed period) is also covered.
3. Baggage does not include motor vehicles, alcoholic drinks and goods imported through courier.

Study Note - 3 : Customs Law

4. Baggage does not include articles imported under an import licence for his own use or on behalf of others.
5. Currency (foreign or Indian) can be taken out of (or brought in) India only as per restrictions imposed by Reserve Bank of India under foreign exchange regulations.
6. Possession of narcotic drugs is strictly prohibited.
7. Domestic pets like dogs, cats, birds, etc., can be brought as per strict health certificate regulations.
8. Taking out exotic birds, wind orchids and wild life, is strictly prohibited.
9. Endangered species or articles made from flora and fauna such as ivory musk, reptile skins, furs, shahtoos or antiques are prohibited.
10. Baggage owner has to make a declaration of its contents to Customs Officer. Customs duty will be calculated on the basis of rate of duty and tariff valuation applicable on the date of declaration.
11. It is not practical to ask every passenger to declare contents of his baggage. For this purpose, 2 channels (red and green) are provided. If a person does not have any dutiable goods, he can go through green channel. If a person adopts green channel, technically it is a declaration that he is not carrying any dutiable goods. If a person (going through green channel) carries dutiable goods, he can be penalized for false declaration.
12. A person (carrying dutiable goods) should pass through red channel and should submit declaration. The declaration of goods and value as given by passenger in disembarkation card is generally accepted, but baggage can be inspected by Customs Officer.

Rate on customs duty on baggage – Tariff rate is 35 per cent (as specified by the relevant notification). Baggage is exempt from IGST.

Duty free clearance for passengers arriving from other countries – These cases are governed by rules 3 and 4 of Baggage Rules, 2016. These rules are applicable if the passenger is an Indian resident or a foreigner residing in India or a tourist of Indian/foreign origin. In these cases, the passenger shall be allowed duty free clearance of the following bona fide articles in his baggage -

Jewelry – A passenger residing abroad for more than 1 year, on return to India, shall be allowed duty free clearance in his bona fide baggage of jewelry up to a weight and value given below-

- Lady passenger – 40 grams with a value cap of Rs. 1,00,000.
- Gentleman passenger – 20 grams with a value cap of Rs. 50,000.



Transfer of residence – Rule 6 is applicable if a person (who is engaged in a profession abroad) returns to India. This rule is also applicable if a person is transferring his residence to India. Rule 6 provides duty free clearance of bona fide baggage in addition to what is allowed under rules 3 and 4. Under rule 6, duty free clearance is allowed in respect of personal and household articles including articles mentioned in Annexure III. However, duty free clearance is not allowed in respect of articles mentioned in Annexure I and Annexure II. The relevant monetary ceiling and other conditions are given below –

Duration of stay	Duty free clearance up to the ceiling given below
Duration of stay abroad is 3 months or more but up to 6 months	Rs. 60,000
Duration of stay abroad is 6 months or more but up to 1 year	Rs. 1,00,000
Minimum stay of 1 year during the preceding 2 years	Rs. 2,00,000 (available only if the passenger has not availed this concession in preceding 3 years)
Minimum stay of 2 years or more	Rs. 5,00,000 (subject to conditions mentioned in Rule 6)

3.11. DIFFERENT EXEMPTIONS FROM CUSTOMS DUTY

Customs duty exemptions are provided through provisions of Customs Act. Besides, exemptions are given under Customs Tariff Act. Exemptions can also be granted (fully or partly by the Central Government by issuing a notification under section 25 of the Customs Act. Exemptions given by notifications may be unconditional or subject to conditions given in the notification. Conditions imposed under notifications may be required to fulfill before or after clearance. Central Government can also extending exemption by a special order in exceptional circumstances. Exemption notifications are published in Official Gazette. Section 25(2) of Customs Act permits the Central Government to issue ad hoc exemption from customs duty by issue of a special order in exceptional circumstances. The order must specify the exceptional circumstances for granting ad hoc exemption.

Moreover, general exemptions are granted for imports by privilege persons/organizations. This category includes duty free import by UN agencies, Governors, Ford Foundation, Vice President of India, specified equipment by foreign news agency, etc. There is no general exemption to goods imported by the Government. Different exemption notifications have, however, been issued for duty free imports by Indian Navy, Police, Ministry of Defence, Coastal Guard, etc. If there is no such exemption notification, customs duty will be payable even if goods are imported by Central/State Government/local authority or by a department of Central Government/State Government/local authority.

Study Note - 3 : Customs Law

Rationale for granting exemptions – The Central Government has power to grant exemptions under the overall control of Parliament. The Central Government on rationale basis can grant exemptions. Government's decision to grant exemption may be based upon any of the following factors –

1. **Discretionary provision** – It is applicable where exemption is basically used for industrial growth of the country and/or for controlling the economy.
2. **Moral grounds** – Duty may not be leviable because of Government's exemption on moral ground. Some of the examples are –
 - a. where in transit goods are damages and deteriorated;
 - b. where goods have reached the Indian soil, but are not available for consumption;
 - c. where the goods do not reach the Indian soil at all.

3.12. REFUNDS

Refund is obtainable if customs duty was paid in excess while clearing the goods. However, if there was adjudication order/approval of Bill of Entry imposing such duty, an appeal should be filed with the appropriate authority to rectify such order.

Application for refund of Customs Duty

Application for refund must be made in prescribed form in duplicate. The form has been prescribed in Customs Refund Application (Form) Regulations, 1995. Application should be filed along with relevant documents regarding payment of duty, reasons for claiming refund and evidence that burden of customs duty has not been passed on to another person.

Refund of customs duty as well as interest

As per section 47(2) of Customs Act, 1962, if duty is not paid within five days of return of bill of entry to make payment of duty, interest is payable. If excess duty is refunded, pro rata interest should also be refunded. Time limit for filing refund claim

Refund claim should be lodged within six months (usually counted from date of payment of duty, except in few cases). This period is one year in case of imports made by individual for personal use or by Government or by any educational, research or charitable institution. If duty was paid under protest, time limit of 6 months /one year is not applicable. If duty was paid on provisional basis, period of 6 months /one year will be calculated from the date of adjustment of duty after final assessment.



Refund to buyer/Importer/exporter if no 'Unjust Enrichment'

Under proviso to section 27(2) of Customs Act, refund of customs duty and interest paid on such duty can be made to importer/buyer only in following cases –

- If Importer/exporter/buyer has not passed on incidence of the duty to another person.
- If Imports are made by individual for his personal use.
- In case of Refund of export duty, if any u/s 26 of Customs Act.
- In case of Duty drawback payable to exporter u/s 74 or 75 of Customs Act.
- If borne by any other such class of applicants as may be specified by Central Government, by notification and the incidence of duty has not been passed on to any other person. Such notification has to be placed before Parliament and got approved. (so far, not a single notification has been issued under this provision).
- In case of no claimant, refund will be credited to Consumer Welfare Fund.

STUDY NOTE – 4

INCOME TAX

This Study Note includes:

- Origin and Basic Concept
- Income Exempted from Tax
- Salary Income
- Income from House Property
- Profit and Gains of Business and Profession
- Capital Gains
- Income from Other Sources
- Assessments
- Tax Deduction at Sources (TDS)
- Returns

4.1 ORIGIN & BASIC CONCEPTS

4.1.1 Origin of the Statute and Act in vogue

The first statute that governed Income-tax was the Income-tax Act, 1922, enacted by the erstwhile British Government, continued by Independent India till 1961, when it was replaced by the Income-tax Act, 1961. Income-tax Act, 1961 imposes tax on income other than agricultural income. Tax on agricultural income can be imposed only by State Governments.

Income tax is levied under Entry No. 82 of List I of Seventh Schedule to Constitution (Union List), which reads, 'Tax on income other than agricultural income'. Entry No. 46 of List II of Seventh Schedule to Constitution (State List) reads, 'Taxes on agricultural income'.

The legal position discussed is as applicable for financial year 2020-21 (Assessment Year 2021-22) unless otherwise stated.

4.1.2 Basic Concepts

4.1.2.1 Income-tax Liability

Section 4 of Income Tax Act, which is the charging section, states that where any **Central Act** enacts that income tax shall be charged for any assessment year at any rate or rates,



income tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions (including provisions for the levy of additional income tax) of this Act in respect of the total income of the previous year of every person.

The 'Central Act' as referred to in section 4 of Income Tax Act is the 'Finance Act' enacted every year. Income Tax is payable by every assessee at the rates prescribed by Finance Act every year. The Finance Bill is presented at the time of presenting Budget, usually on the first working day of February every year. The relation between Finance Act and Budget is so close that often people associate budget only with taxation.

4.1.2.2 Assessment Year

Assessment year means the period of 12 months commencing from 1st April and ending on 31st March of the next year.

4.1.2.3 Previous Year

Previous year means the financial year immediately preceding the assessment year.

If a business/profession is newly set up, previous year is the period from date of setting up (not 1st April) of that business or profession and ending with that financial year. The income earned during the previous financial year or previous year is assessed in the next financial year or Assessment Year.

For example, if 1st April 2020 to 31st March 2021 is the financial year for which income is accounted for and tax has to be assessed, the same period is known as Previous Year (PY) and 1st April 2021 to 31st March 2022 is known as the Assessment Year (AY). It may be noted that an assessee can have an accounting year of 12 months commencing from any day of the year other than the Previous Year under Income-tax Act say, 1st January to 31st December or 1st July to 30th June or 1st October to 30th September or Diwali to Diwali, but for income tax purposes, the accounts must be closed only on 31st March every year.

4.1.2.4 Person

'Person' includes Individual, HUF, Company, Partnership Firm, Association of Persons (AOP) or body of individuals whether incorporated or not, Local Authority like Municipality etc., or an Artificial Judicial person not falling in any of the aforesaid categories e.g. a Hindu deity.

4.1.2.5 Assessee

Assessee means a person by whom any tax or any other sum of money is payable under Income tax Act. It includes deemed assessee.

4.1.2.6 Income

Income is classified under the following heads of income (Sec 14)

Study Note - 4 : Income Tax

- Income from Salaries
- Income from House Property
- Profits and gains of business or profession
- Capital Gains
- Income from Other Sources, e.g., interest, dividend, lotteries and races etc.

4.1.2.7 Calculation of Income-tax

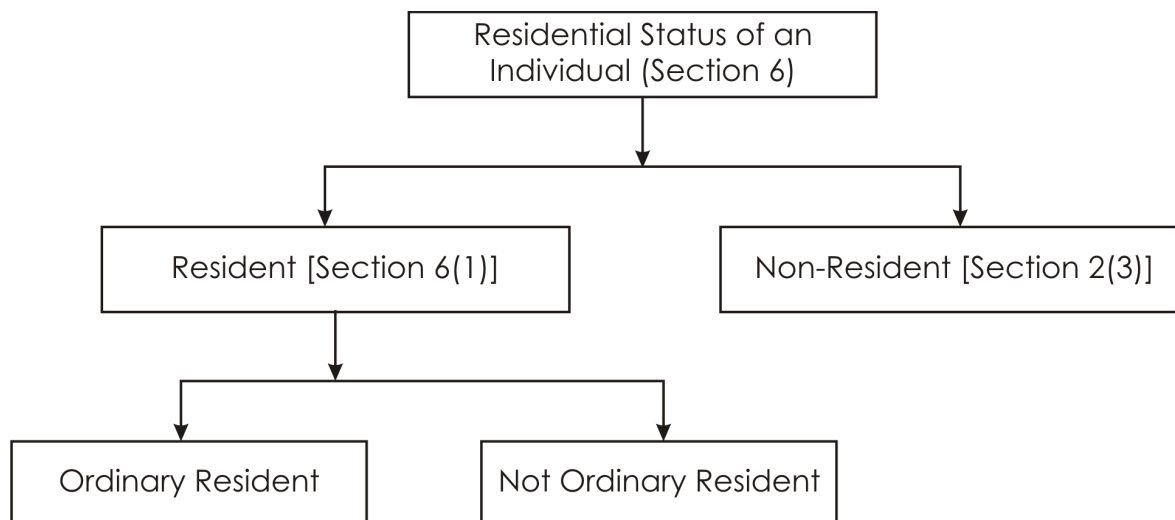
A person may have income from one or more of the above mentioned heads. Income from each of these heads is first calculated, added up, permissible deductions are made and the net income taxable is arrived at. The tax payable on this net income is calculated at the prescribed rates.

Income from one head can be set off against loss from other head, unless specifically prohibited. If income to the assessee arises under any one of the heads of income but from different items, i.e., different house properties on difference securities etc., and income from one or more items alone is taxable whereas income from the other item is exempt under the Act, the entire permissible expenditure in earning the income from that head is deductible. If assessee carries business in various ventures, entire expenditure incurred on all ventures is deductible if all ventures constitute core business.

4.1.2.8 Residential status

Income tax liability depends on residential status of a person. Assesseees are either resident in India, or non-resident in India.

4.1.2.8.1 Residential status of an individual





Resident in India: An individual is a **Resident in India** in any previous year, if he satisfies at least one of the following conditions –

- (1) He is in India in the previous year for a period of 182 days or more, **or**
- (2) He is in India for a period of 60 days or more during the previous year and 365 days or more during 4 years immediately preceding the previous year [section 6(1) of Income Tax Act]

However, in the following cases the period of 60 days in basic condition (2) above will be 182 days –

- (a) An Indian citizen who leaves India during the previous year for the purpose of employment outside India.
- (b) Indian citizen who leaves India during the previous year as a member of the crew of an Indian ship.
- (c) Indian citizen who leaves India during the previous year as a member of the crew of an Foreign bound ship.

Indian citizen or a person of Indian origin, who being outside India, comes on a visit to India in any previous year, having to total income, other than income from foreign sources, exceeding Rs.15 lakh during the previous year, will be treated as resident in India if –

- (i) the period of his stay during the relevant previous year amounts to 182 days or more, or
- (ii) he has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 120 days in the previous year.

Deemed resident [Section 6(1A)] – An individual, being an Indian citizen, having total income, other than the income from foreign sources [i.e., income which accrues or arises outside India (except income from a business controlled from or profession set up in India) and which is not deemed to accrue or arise in India], exceeding Rs.15 lakhs during the previous year would be deemed to be resident in India in that previous year, if he is not liable to pay tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.

However, this provision will not apply in case of an individual who is a resident of India in the previous year as per section 6(1).

Resident and Ordinarily Resident: A resident individual will be “**Resident and Ordinarily Resident**” in India if he fulfils the following conditions –

- (1) He has been resident in India in at least 2 out of 10 previous years immediately preceding the relevant previous year; and

Study Note - 4 : Income Tax

- (2) He has been in India for a period of 730 days or more during 7 years immediately preceding the relevant previous year.

Resident but Not Ordinarily Resident: A resident who does not satisfy both the above conditions will be Resident but Not Ordinarily Resident in India.

4.1.2.8.2 Residential status of a Hindu undivided family 'HUF'

Resident: A HUF is said to be **Resident** in India in any previous year except where during that year the control and management of its affairs is situated wholly outside India, [Sec 6(2)]

Resident and Ordinarily Resident in India: A resident 'HUF' will be '**Resident and Ordinarily Resident in India**' in any previous year if its Karta or manager)

- (1) has been resident in India in at least 2 out of 10 previous years immediately preceding that relevant previous year; and
- (2) Has been present in India for a period of 730 days or more during 7 years immediately preceding relevant previous year.

Resident but not Ordinarily Resident: If both the above conditions are not satisfied, the HUF will be '**Resident but Not Ordinarily Resident in India**'.

Residential status of a 'Firm' or 'Other Association of Persons'

Resident – A 'Firm' or 'Other Association of Persons ' is said to be **Resident** in India in any previous year except where during that year the control and management of its affairs is situated wholly outside India, [Sec 6(2)].

4.1.2.8.3 Residential status of a company

Under section 6(3) of the Income Tax Act, A Company is said to be a resident in India in any previous year if:

- (a) It is an Indian Company; or
- (b) its place of effective management, in that year, is in India.

Place of effective management (POEM) means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made.

4.2 INCOME EXEMPT FROM TAX

4.2.1 Exemptions under the head Salary:- Salary in total:

Salary up to Rs. 2,50,000 is exempt from tax for an Individual tax payer (less than 60 years of age) (Both Men and Women) for the assessment year 2021-22.



Salary up to Rs.3,00,000 is exempt from tax for Senior Citizens (more than 60 years of age but less than 80 years old) (Both Men and Women) for the assessment year 2021-22.

Salary up to Rs. 5,00,000 is exempt from tax for an Senior Citizens (80 years age or more) (Both Men and Women) for the assessment year 2021-22.

Investments in PPF, Provident Fund, LIC, repayment of housing loans, NSIC, 5 year FDR with scheduled banks, 5 year time deposit in post office, deposit in Senior Citizens Saving Scheme etc. are allowed as deduction upto Rs 1,50,000 u/s 80C.

House Rent: Lowest of the following will be exempt towards House Rent:

- (a) 50% of salary where residential accommodation is in Mumbai, Kolkata, Delhi or Chennai and 40% of at other place;
- (b) Excess of rent paid over 10% of salary;
- (c) Actual allowance paid. There will be no exemption if the residential accommodation is owned by employee or employee has not paid any rent for residential accommodation used by him.

Gratuity:

- a. For Government employees gratuity is fully exempt.
- b. In case of employees covered under Payment of Gratuity Act, exemption is upto Rs 20,00,000 to be reduced by such exemptions claimed in the past or 15 days salary for every completed year of service, whichever is lower. Salary means basic + DA.
- c. Any other gratuity is also exempt to same extent as in 'b' above. Salary means basic plus DA (if forming part of retirement benefits) + fixed percentage of commission on turnover.

Commutation of Pension

Any payment in commutation of pension received by a retired Central/State Government servant is completely exempt. In the case of other employees

- (A) if employee receives gratuity also then $\frac{1}{2}$ of 100% of commuted value of pension shall be exempt.
- (B) if employee does not receives gratuity the $\frac{1}{2}$ of 100% of commuted value of pension shall be exempt.

Leave encashment

Encashment of leave during tenure of service – Leave encashment to an employee, while he continues to be in service with the same employer, it is fully taxable irrespective of whether he is govt. non-govt. employee.



Study Note - 4 : Income Tax

Encashment of Accumulated Leave at the time of Retirement – For this purpose employees are divided into two categories –

- (i) **Govt. Employees** – Leave encashment of accumulated leave at the time of retirement, whether on superannuation or otherwise, received Govt. employees, is fully exempt from tax.
- (ii) **Other employees** –

Lowest of the following shall be exempt –

1. Leave encashment actually recd.
2. 10 months 'Average salary'.
3. Unavailed Leaves (As per Income tax) × Average Salary
4. Rs.300,000.

Leave Travel Assistance/Leave Travel Concession

The LTC is exempt subject to amount of expenses actually incurred by the employee for such travel for himself and his family. The employee will have to keep account of actual expenses incurred. The exemption will be limited to the overall ceiling on expenses is subject to limit of air fare/rail fare, as the case may be.

Voluntary Retirement Benefits(VRS)

It is exempt upto Rs.5 lakh if VRS is as per prescribed conditions. **Medical treatment**

The following exemptions are available in a year:-

- Medical Insurance premium for the assessee and his family upto Rs.25,000.
- Medical insurance premium for dependent parents upto Rs.25,000/-.
- In case of foreign travel for medical treatment and treatment expenses abroad, benefits upto the limits prescribed by RBI will be exempt and beyond the limits prescribed by RBI will be treated as perquisite and subject to tax.
- In case of treatment in Government or approved hospital, reimbursement of medical expenses is exempt without any ceiling.

The following are the other exemptions

- Gifts upto Rs 5,000/- per year are exempt
- Professional Tax paid to State Government
- Entertainment allowance upto Rs 5,000 to Government employees



- Transport allowance upto Rs.3,200 per month for the purpose of commuting between place of residence and the place of his duty only in case of orthopedically handicapped or blind.
- Conveyance and transport allowance granted to employee to meet cost of travel on tour are exempt.
- Allowances granted to meet expenditure incurred on conveyance in performance of duties of an office or employment are exempt
- Conveyance, travel expenses and cost of packing and transport of personal effects granted to employee to meet cost of travel on transfer are exempt
- Use of employer's vehicle or transport provided for journey of employee from residence to his place of work and back is not treated as perquisite and its cost is not treated as income.
- Refreshments during office hours to employees and recreational facilities provided to group of employees are not treated as perquisites.

4.2.2 Exemptions under the head Income from House Property:-

From the 'Annual Value of House Property', in case of let out property, following will be allowed as deduction –

- (a) Municipal tax paid by owner only on actual payment basis.
- (b) Standard deduction of 30% of Net Annual Value (gross annual value less municipal tax).
- (c) Interest on capital borrowed to acquire or construct the house property subject to limit explained below

Annual Value of a self-occupied property is taken as 'Nil', if it is not let out. In such cases, none of the aforesaid expenses are allowed as deduction. However, if the self-occupied property is acquired or constructed from borrowed funds, interest payable on such funds up to Rs 2,00,000/- per annum is allowed as deduction. Interest on borrowed capital for repairs is allowable as deduction upto Rs 30,000/- per annum.

4.2.3 Exemptions under the head Profits and Gains of Business or Profession:-

For any other individual (other than salaried), every HUF/AOP/BOI/artificial juridical person HUF Income upto Rs. 2,50,000 is exempt from tax.

4.2.4 Exemptions under the head Capital Gains:-

There is no exemption under Short Term Capital Gains, i.e., assets held for less than 12/24/36 months as the case may be.



Study Note - 4 : Income Tax

In respect of Long Term Capital Gains, the following exemptions are available –

- Income from sale of Mutual Fund Units and Equity Shares held for more than one year is Exempt upto Rs.1,00,000 in addition to max. exemption of Rs.250,000.
- Any other long term capital gain is exempt if the capital gains are invested within 6 months in 5 years bonds issued by RECL or NHAI and that investment is retained for 5 years, but such investment cannot exceed Rs.50 lakh [Section 54EC of Income Tax Act].

4.2.5 Exemptions under the head Other Income –

- **Dividends** on shares of domestic companies or units of UTI or mutual fund received from a company are totally exempt in the hands the assessee.
- **Gifts** are exempt in a year upto Rs 50,000. Gifts from certain relatives and gifts on certain specified occasions are also exempt from tax.
- **Interest** on savings bank account upto Rs.10,000 (Rs.50,000 in case of senior citizen).

4.2.6 Miscellaneous

- Agricultural income.
- Any compensation received by a workman under the Industrial Disputes Act, 1947 at the time of retrenchment not exceeding Rs.500,000/-.
- Any sum received on maturity of an insurance policy or bonus thereof, subject to the condition that the premium does not exceed 20% of the sum assured in respect of policies issued upto 31.03.2012 and 10% of the sum assured in respect of later policies.

The above exemptions are not exhaustive. Besides these, income of certain notified (i) institutions like local bodies, educational institutions, charitable institutions, educational institutions etc (ii) classes of persons like PIOs, NRIs, HUF, Non-Residents, Bhopal Gas Tragedy Victims etc (iii) underdeveloped regions like North-east, (iv) interest/dividend from instruments of investment, (v) Foreign Governments, Diplomatic Missions and their employees are also exempt from income-tax subject to certain conditions. Please give a thorough reading of Chapter III (Sections 10 to 13), Chapter VI-A (Section 80) and Chapter VIII (Section 87) of the Act to know the different types of deductions/exemptions/ rebates available.

4.3 SALARY INCOME

4.3.1 Income under the head ‘salary’

Income under this head comprises of remuneration in any form, including perquisites, received by an employee from his employer. Thus, there should be contractual employer- employee relationship. The contract may be express, oral or implied.



Salary is chargeable on due or receipt whichever is earlier basis. Arrears of salary paid or allowed are includible if not charged to income tax for any earlier previous year.

'Salary' includes wages , dearness allowance, Bonus, gratuity, annuity or pension, advance of salary, Fees/Commissions/perquisites/profits received from employer in addition to salary. Leave encashment while in service, Employer's contribution to provident fund in excess of 12% of salary of employee, profit in lieu of salary is also income under Salary.

4.3.2 Elements of Salary

Although the term "Salary" has not been exhaustively defined in the Act, the statutory definition of the term under section 17 (1) includes the following elements:

1. Wages;
2. Any annuity or pension;
3. Any gratuity;
4. Any fees, commissions, perquisites or profit in lieu of or in addition to any salary or wages;
5. Any advance salary;
6. Any payment received by an employee in respect of any period of leave not availed by him;
7. The annual accretion to the balance at the credit of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax;
8. The aggregate of all sums that are comprised in the transferred balance of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax;
9. Contribution made by Central Government or any other employer in the previous year to the account of an employee under a pension scheme referred to in Section 80CCD.

4.3.3 Exemptions

Exemption, among other, under the following heads have been discussed in para 4.2.1

- House Rent Allowance. There will be no exemption if the residential accommodation is owned by employee or employee has not paid any rent for residential accommodation used by him.
- Gratuity
- Leave encashment
- Medical treatment and reimbursements

Study Note - 4 : Income Tax

4.3.4 Valuation of perquisites

The employer often gives some perquisites to the employees. Value of these perquisites is added to the income of employees. The valuation of perquisites is done as follows :

4.3.4.1 Rent Free accommodation Section 17 (2) (i)

The value of rent free accommodation provided to the Government as well as non- government employees shall be as under:

a. Accommodation provided to Government employees:

- **If the accommodation is unfurnished:** The value of accommodation shall be equal to the licence fee determined by the Central or State Government in accordance with the Service Rules.
- **If the accommodation is furnished:** With the amount determined as above for unfurnished accommodation, 10% p.a. of the cost of furniture (including television, radio, refrigerators, other household appliances, air conditioning plant or equipment) is to be added.
- **If the accommodation is provided at concessional rates:** With the amount determined for furnished or unfurnished accommodation as above, the amount actually payable by the employee in respect of accommodation or furniture, as the case may be, shall be deducted.

b. Accommodation provided for non-government employees:

In case of private sector employees, value of perquisite of rent free unfurnished accommodation, if owned by the employer is taken as follows

- If population of city exceeds 25 lakhs – 15% of salary
- If population exceeds 10 lakhs but below 25 lakhs – 10% of salary
- In other cases – 7.5% of salary

4.3.4.2 Furnished accommodation

In case of private employees, if accommodation is furnished, in addition to what is stated in **4.3.4.1 (b)** above, 10% of cost of furniture (including TV, radio, refrigerator, AC etc.), if owned by employer, will be treated as perquisite. If the furniture is hired from third party, actual hire charges less any amount recovered from employee will be the perquisite.

4.3.4.3 Hotel Accommodation

In case of hotel accommodation provided to employee on transfer for more than 15 days, 24% of salary or the actual hotel expenses whichever is lower as reduced by the rent, if any



actually paid or payable by the employee will be the perquisite value. For this purpose Salary includes basic pay, DA (if taken into account for retirement benefit), bonus, commission, fees and all taxable allowances.

4.3.4.4 Free or concessional education

As the sum equal to the amount of expenditure incurred by the employer less the amount paid by the employee in that behalf shall be the perquisite value. If the employer itself is an educational institution, the expenditure of employer shall be taken as the fee charged for such course by any other educational institution in the locality. In case of employer running his own institute then Rs.1,000 p.m. per child shall be exempt.

4.3.4.5 Gas electricity or water supply

Some benefits like gas, electricity, water are valued at actual cost to employer. If these are provided from own sources, value will be manufacturing cost incurred per unit, less amount recovered from employee shall be the perquisite value.

4.3.4.6 Domestic servants

Actual cost to employer for sweeper, gardener, watchman or personal attendant will be value of perquisite.

4.3.4.7 Use of movable assets

If some movable asset is provided to employee, perquisite will be @10% of the cost of asset or rent paid, as reduced by sum paid by employee.

4.3.4.8 Any other benefit or amenity

The value of such benefit less what was actually paid by the employee shall be the perquisite value.

4.3.4.9 Loans to employees at concessional rate

Difference between interest on basis of SBI lending rates on the 1st day of the previous year and actual interest paid by employee to the employer will be the value of perquisite.

4.3.4.10 Motor car

The perquisite value shall be –

- (1) If car is owned by employer valuation will be expenditure incurred by employer on running and maintenance plus remuneration of chauffeur plus normal wear and tear @ 10% on actual cost less amount charged to employees.
- (2) If the car is hired, the hire charges plus remuneration of chauffeur less amount charged to employee.

Study Note - 4 : Income Tax

- (3) If motor is partly for official and partly for personal purposes and expenses are reimbursed by employer, perquisite value per month is Rs 1,800 per month if engine cubic capacity is upto 1.6 litres and Rs 2,400 per month if cubic capacity of engine exceeds 1.6 litres.
- (4) If motor is partly for official and partly for personal purposes and expenses are fully met by the employee, perquisite value per month is Rs.600 per month if engine cubic capacity is upto 1.6 litres and Rs 900 per month if cubic capacity of engine exceeds 1.6 litres.

In respect of (3) & (4) above, Rs.900 per month shall be added if official chauffeur is provided.

4.3.4.11 Other amounts paid

Club fees paid on behalf of employee, insurance premia paid on behalf of employee, income tax paid on behalf of employee are all treated as perquisites and its cost is added to income of employee.

4.4 INCOME FROM HOUSE PROPERTY

Income from house property consists of income from buildings and/or lands appurtenant thereto. However, income only from vacant plot or land is treated as 'income from other sources'.

In case of let out property, income will be 'fair annual value' i.e. sum reasonably expected to be received from letting or 'actual rent received' whichever is higher. Deduction is allowable for unrealized rent.

'Annual Value or Property' is the sum for which the property could reasonably be expected to be let out from year to year. Municipal Valuation of rateable value can be taken as one of the tests to determine *bona fide* value of the property. If the house property is given on rent, actual rent received will be the 'annual value of the house property'.

From the 'Annual Value of House Property', in case of let out property, following will be allowed as deduction

- (a) Municipal tax – The deduction will be permitted on actual payment basis if paid by owner only.
- (b) Standard deduction of 30% of Net Annual Value (gross annual value less municipal tax)
- (c) Interest on capital borrowed to acquire or construct the house property subject to limit explained below

Annual Value of a self-occupied property is taken as 'Nil', if it is not let out. In such cases, deductions are not available. However, if the self-occupied property is acquired or constructed or repaired from borrowed funds, interest payable on such funds upto Rs 2,00,000 per annum is allowed as deduction. Interest on borrowed capital for repairs is allowable as deduction



upto Rs 30,000. Naturally, in such cases there will be a 'loss' which can be set off against any other income of the assessee.

4.5 PROFIT AND GAINS OF BUSINESS AND PROFESSION

4.5.1 Business

The term 'business' shall include any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.

4.5.2 Profession

'Professional Income' is income from exercise of any profession or vocation which calls for an intellectual or manual skill. It covers doctors, lawyers, accountants, consulting engineers, artists, musicians, singers etc.

4.5.3 Deductions Allowed

Profits of business or gains from profession are calculated after allowing all legitimate business expenditure. Some important deductions admissible in computing income from business or profession are as follows –

- Rent, rates, taxes, repairs and insurance for business or professional premises.
- Current repairs and insurance of machinery, plant or furniture.
- Depreciation on building, machinery, plant or furniture.
- Revenue expenditure on scientific research.
- Capital expenditure on scientific research related to business (except land).
- Preliminary expenses in relation to formation of a company or in connection with extension of an undertaking or setting up of a new industrial unit.
- Insurance expenses.
- Insurance premium on health of employees.
- Bonus or commission to employees.
- Interest on borrowed capital.
- Contributions towards approved provident fund, superannuation fund and gratuity Fund.
- Bad debts in respect of income considered in previous years can be written off and allowable as deduction.
- Advertisement expenditure is fully allowed as deduction. However, expenditure incurred on advertisement in any souvenir, brochure, pamphlet etc. of a political party is not allowed as a deduction.

Study Note - 4 : Income Tax

- Any other expenditure which is not of capital nature or personal expenses of the assessee is allowed if it is expended wholly and exclusively for the purposes of business or profession. However, it should not have been for purpose which is an offence or is prohibited by any law.

4.5.4 Depreciation (Section 32)

Depreciation means diminution in value of an asset on account of wear and tear and obsolescence.

In any business, raw material is used fully and immediately, while plant and machinery is used slowly over a period of time. After the estimated life of machinery, its value becomes Nil. Hence, it is fair that cost of machinery is charged over the period of its estimated useful life. This is the basic principle of depreciation on capital goods. Since land does not depreciate, no depreciation is allowed on land.

Under Income Tax, depreciation is calculated on the basis of 'block of assets'. 'Block of assets' means a group of assets falling within a class of assets, in respect of which the same percentage of depreciation rate has been prescribed. e.g. all machinery having rate of depreciation as 15% will form one block of asset, machinery having 40% rate of depreciation will form another 'block of asset' and so on.

Depreciation is allowed on actual cost of the asset. Interest paid on borrowed funds and capitalised as pre-commencement expenses before the asset is installed, is added to cost of the asset and depreciation claimed on such expenditure. Thus, pre-production expenditure can be included in cost of the machinery and depreciation can be charged on such 'actual cost'.

Depreciation is calculated on Written down Value (WDV) method. If the asset is put to use for purpose of business for less than 180 days, only 50% of normal depreciation is permissible.

If depreciation cannot be fully claimed in a particular year for want of profits, the un-absorbed depreciation can be carried forward for any number of succeeding assessment years.

The depreciation rates in respect of some important assets are as follows:

- Residential building – 5%. Other buildings (including hotels and boarding houses) – 10%. Purely Temporary Structures – 100%.
- Furniture and fittings including electrical fittings – 10%
- Motor cars 15% . Buses, lorries, and taxis used in business of running them on hire – 30%
- Pollution control equipment and specified energy saving devices - 40%
- General machinery - 15%, aeroplane – 40%, Ships – 20%



- Computers including software - 40%
- Books by professionals for annual subscription, books in library and others - 40%.
- Intangible assets - know-how, patents, copyrights, trademarks, licenses, franchises or any other right of similar nature - 25%.

Depreciation compulsory – As per Explanation 5 to section 32(1)(ii), depreciation is compulsory in computing total income even if assessee had not claimed the same. This amendment applies to AY 2002-03 onwards.

Depreciation in case of imported machinery obtained on loan in foreign currency – If machinery is imported on loan repayable in foreign currency, the amount payable in rupees will go on changing due to fluctuations in foreign exchange rates, as the instalments and interest are spread over a period. In such case, the value of machinery should be increased/decreased on basis of loan outstanding and not merely instalments of loans that fell due during the accounting period.

4.5.5 Expenditures not allowed as deduction

Following expenditures are not allowed as deduction for purpose of income tax –

Deduction of taxes, interest etc. only on actual payment basis - Tax, duty, cess, fees payable under any law, Employer's contribution to provident fund or ESIC, bonus/commision/ leave salary to employees, interest on any loan or borrowing from financial institutions, banks, SFC etc. due amount should be paid on or before the due date of furnishing the return of income u/s 139(1) in respect of the previous year in which the liability to pay such sum was incurred and proof of payment should be attached along with the Return of Income.

However, if the payment of outstanding liability is made after the due date, deduction can be claimed in the year of payment.

Expenditure in excess of Rs 10,000 in cash fully disallowed - Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account, exceeds Rs.10,000, no deduction shall be allowed in respect of such expenditure.

Section (3A) Where an allowance has been made in the assessment for any year in respect of any liability incurred by the assessee for any expenditure and subsequently during any previous year (hereinafter referred to as subsequent year) the assessee makes payment in respect thereof, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account, the payment so made shall be deemed to be the profits and gains of business or profession and accordingly

Study Note - 4 : Income Tax

chargeable to income-tax as income of the subsequent year if the payment or aggregate of payments made to a person in a day, exceeds Rs.10,000,.

Exceptions of the Provision of Section 40A (3) – No disallowance of expenses exceeding Rs. 10,000 in a day made otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, should be made in case of the following expenses –

1. Where the Payment is made to:
 - (a) Reserve Bank of India or any banking company; (b) State Bank of India or any subsidiary bank;
 - (c) Any co-operative Bank or Land Mortgage Bank;
 - (d) Any primary agricultural credit society or any primary credit society; (e) Life Insurance Corporation of India;
2. Where the payment is made to the Govt. and, under the rules framed by it, such payment is required to be made in legal tender;
3. Where the payment is made by:
 - (a) Any Letter of Credit Arrangements through a Bank (b) A Mail or telegraphic transfer through a Bank
 - (c) A Book adjustment from any account in a bank to any other account in that or any other bank
 - (d) A Bill of exchange made only payable to a Bank
 - (e) The use of electronic clearing system through a Bank Account
 - (f) A Credit Card (g) A Debit Card

Interest on delayed payment to MSME - Interest on delayed payment made to Micro, medium and Small Enterprises is not allowable as deduction.

Expenditure for any purpose which is an offence in law - Section 37(1) of Income Tax Act states that any expenditure incurred for any purpose which is an offence or which is prohibited by law shall not be allowed as deduction.

4.5.6 Different accounting for balance sheet and income tax purposes - Method of depreciation, valuation of stock etc. is different under Companies Act and Income Tax Act. Hence, one method of accounting for income tax and other for Companies Act is permitted.



4.5.7 Maintenance of books of account

In respect of professionals in legal, medical, engineering, architecture, accountancy or technical consultancy must maintain books, if their gross receipts are more than Rs 1.50 lakh in the last three previous years and maintain cash book, journal, ledger, copies of bills exceeding Rs.50 issued by him, original bills in respect of expenditure and payment vouchers etc. Person carrying on medical profession has to maintain additional books as prescribed.

Persons carrying on business or profession other than those mentioned above have to maintain books of accounts if annual income exceeds Rs 1,20,000 or gross receipts or turnover exceed Rs. 10 lakh in case of business also have to maintain books of account. In case of Individual and HUF this limit is Rs.2,50,000/25,00,000 in place of Rs.1,20,000/ 10,00,000.

4.5.8 Accounts on mercantile or cash basis - Accounts should be maintained either on mercantile basis or cash basis. Hybrid i.e. mixed system is not permitted. In cash system, income or expenditure is considered only when it is actually received/paid. In mercantile system, income/expenditure is considered on accrual and payable basis. Actual receipt or payment may occur in subsequent financial year and may not happen in that particular year.

4.5.9 Income tax audit report - If gross receipts or turnover of business exceeds Rs.1 Crore per annum, the accounts have to be compulsorily audited. In case of professional income, accounts have to be audited if gross receipts exceed Rs.50 lakh. This audit report should be the furnished by 30th September of the relevant Assessment Year. [section 44AB].

Provided that in case of a person whose aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed 5% of the said amount and aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed 5% of the said payments, this limit will be Rs.5 crore in place of Rs.1 crore.

4.6 CAPITAL GAINS

4.6.1 What are Capital Gains?

Capital gain means any profit or gain arising from transfer of a capital asset. Such capital asset may be building, non-agricultural land, machinery, shares, jewellery etc. However, stock in trade, agricultural land in rural area and personal effects (other than jewellery) are not 'capital assets'.

Archaeological collections, paintings, sculptures will also be treated as 'capital assets'.

Broadly, 'capital gain' is the difference between the price at which the asset was acquired and the price at which it was sold. Incidental expenditure and cost of improvement is allowable as deduction.

Study Note - 4 : Income Tax

4.6.2 Cost of Inflation index and its use in calculating Capital Gains –

The 'cost of acquisition of capital asset' is to be increased by Cost Inflation Index. The index is announced by Central Government every year. **Central Board of Direct Taxation (CBDT)** on 12th June 2020 announced the cost of inflation index for the year 2020-21. The index table is given below for better understanding:

Financial Year	Cost Inflation Index	Financial Year	Cost Inflation Index
2001-02	100	2002-03	105
2003-04	109	2004-05	113
2005-06	117	2006-07	122
2007-08	129	2008-09	137
2009-10	148	2010-11	167
2011-12	184	2012-13	200
2013-14	220	2014-15	240
2015-16	254	2016-17	264
2017-18	272	2018-19	280
2019-20	289	2020-21	301

The cost of acquisition will be adjusted on basis of the above index and then capital gain will be calculated. The formula is $\text{Cost of acquisition} \times \text{Cost Inflation Index of the year in which the asset is transferred} \div \text{Cost Inflation Index of the year of acquisition}$. If the asset was acquired before 1.4.2001, the Cost Inflation Index of that year will be treated as 100.

$\text{Indexed Cost of Acquisition} = (\text{Cost of Acquisition} \div \text{Cost of Inflation Index (CII) for the year in which the asset was first held by the assessee OR FY 2001-02, whichever is later}) \times \text{Cost of the Inflation Index (CII) for the year in which the asset was sold or transferred}$.

Let us assume that you purchased the property in FY 2005-06 at Rs.50 lakh and sold the same in FY 2020-21 at Rs.1.50 Cr. Now the indexed cost of acquisition will be as per above formula i.e. $\text{Indexed Cost of Acquisition} = (\text{Rs.50 lakh} / 117) \times 301 = \text{Rs.1,28,63,248}$. So the Long Term Capital Gain = Selling Price - Indexed Cost of buying property = Rs.21,36,752.

(Note-As per the below Cost of Inflation Index (CII), the CII rate for FY 2020-21 is 301 and for FY 2005-06, it is 117).

4.6.3 Deductions allowed under the head Capital Gains

Expenditure incurred on any improvement in asset is permitted as deduction and that cost can also be adjusted on the same principles as above.



Expenditure incurred in connection with transfer (like stamp duty, registration charges, legal fees, brokerage etc.) are allowed as deduction. Capital gain is charged as income of the financial year in which the transfer took place.

4.6.4 Long Term and Short Term Capital Gains

“Short term capital asset” means a capital asset which is held by an assessee for not more than 36 months, immediately prior to its date of transfer. In other words, if a capital asset is held by an assessee for more than 36 months, then it is known as “Long term capital asset”.

When such period is taken as 12/24 Months: If a capital asset is transferred after 36 months, it is known as long-term capital asset. However, in the following circumstances a capital asset becomes long-term capital asset even if it is transferred after 12 months or 24 months.

1. **Category A: Period of holding more than 12 months** – Equity or preference shares in a company (listed in a recognised stock exchange in India.)
2. Securities like debentures, bonds, Government securities, derivatives etc. listed in a recognised stock exchange in India.
3. Units of UTI (Whether quoted or not)
4. Units of an equity oriented mutual fund (whether quoted or not)
5. Zero coupon bonds (whether quoted or not)

Category B: Period of holding more than 24 months

1. Equity or preference shares in a company (unlisted) (if transfer takes place on or after April 1, 2016).
2. Immovable property (being land or building or both) (if transfer takes place on or after April 1, 2017).

4.6.5 Tax Rates Applicable to Capital Gains

The income tax rate is 20% + Surcharge and Health & education cess on long term capital gains, while calculating the long term capital gains, indexation of purchase price is required.

The short term gains on debt funds are added in other income of the assessee and the income tax is payable according to the normal rate applicable to the assessee and short term capital gain on equity funds are taxable @ 15% + applicable surcharge and Health & education cess.

Long Term Capital gains on sale of shares and securities is now taxable @ 10% in excess of Rs.1,00,000. Capital gains arising from sale of residential house are exempt if the original asset (i.e. the house) was held for more than 2 years and a new house was purchased within one year before or two years after the sale of original asset, or a new residential house is



Study Note - 4 : Income Tax

constructed within three years. The cost of new asset (residential house) should be equal to or more than the amount of capital gains.

4.6.6 Bonus Shares and Capital Gains

If a company issues bonus shares, the cost of acquisition of bonus shares will be treated as 'Nil'. Thus, if the bonus shares are sold, net sale proceeds of bonus shares will be liable to capital gains tax. But if bonus shares are acquired by the assessee before 1st April, 2001 then cost of such bonus shares shall always be the FMV on 1st April, 2001 in place of nil value.

4.7 INCOME FROM OTHER SOURCES

4.7.1 What are covered under Income from Other Sources?

All income other than income from salary, house property, business and profession or capital gains is covered under 'Income from other sources'. Provisions in respect of some of the important sources of 'other income' are summarised below:

4.7.2 Dividends

Any income by way of dividends received from a company, whether domestic or foreign, is now taxable in the hands of shareholder at normal rates of tax. However, dividend distributed by a domestic company before 1.4.2020 and received by the shareholders on or after 1.4.2020 and on which tax (CDT) under section 115-O, if applicable, has been paid would be exempt in the hands of the shareholders. But if the company distributed dividend on or after 1.4.2020, then this dividend is not exempt in the hands of shareholders. The tax shall be deducted at source (TDS) on such dividend incomes in excess of Rs 5,000 per annum at the rate of 7.5%

4.7.3 Winning from lotteries, races etc.

Winning from lotteries, card games, horse races are taxable as other income. This is taxable @ 30% (further increased by surcharge, if applicable, and health and education cess @ 4%) without claiming any allowance or expenditure. Even no benefit of maximum exemption limit of Rs.250,000.

4.7.4 Interest on securities, bank deposits and loans

Interest on bank deposits and loans is treated as 'other income', if not taxable u/s 28, i.e., as income from profits of business or profession.

4.7.5 Gifts

Gifts in a year exceeding Rs 50,000, except gifts from certain relatives and gifts on certain specified occasions will be taxable [section 56(2)(vi) of Income Tax Act].



4.7.6 Income from letting

Income from letting of furniture, machinery, plant and building which is not separable from composite letting with machineries is taxable as income from other sources. Current repairs, insurance and depreciation are allowed as deductions [section 56(2)(ii) and (iii) of Income Tax Act].

4.8 ASSESSMENT

4.8.1 Permanent Account Number

Every person whose total income exceeds the basic exemption limit or whose total sales, turnover or gross receipts are over Rs 5,00,000 are required to apply and obtain a Permanent Account Number (PAN). Any other person can obtain PAN voluntarily. In addition, Assessing Officer can allot PAN *suo moto* to a person by whom income tax is payable.

4.8.2 Return of income

All assessees with taxable income have to file Income-tax Returns by quoting the PAN. The different forms available and the type of forms to be used by different assessees and due date for filing return are discussed in detail in para 4.10.

4.8.3 Advance Income Tax and TDS

Tax is deducted from salary payable to an employee. Since a businessman or professional earns his own income, there is no TDS (Tax Deduction at Source). Hence, he is liable to pay advance tax as he earns income. This is 'Pay Tax as you Earn'. Thus, advance tax is payable on the basis of estimated income of the current financial year. Advance tax is payable only in cases where tax payable is in excess of Rs 10,000. The assessee has to pay advance tax on his own accord and no notice will be issued to him. The advance tax is payable in instalments as follows –

Due dates for payment of Advance Tax (section 211)

Particulars	For any Assessee (except section 44AD)	For an eligible assessee in respect of an eligible business u/s 44AD or 44ADA
On/before 15th June of the Previous Year	Upto 15% of advance tax payable	****
On/before 15th September of the Previous Year	Upto 45% of advance tax payable	****
On/before 15th December of the Previous Year	Upto 75% of advance tax payable	****
On/before 15th March of the Previous Year	Upto 100% of advance tax payable	Upto 100% of advance tax payable

Study Note - 4 : Income Tax

General - If advance tax is not paid or short paid on due dates, mandatory interest is payable as follows:

- * If advance tax was not paid before 31st March of the financial year, or advance tax paid was less than 90% of the assessed tax, interest @1% per month or part thereof is payable from 1st April till the month of payment. [section 234B]. The interest is not payable if total tax liability is less than Rs 10,000 or if at least 90% of assessed tax was paid before 31st March.
- * If instalments of advance tax are not paid on due dates, interest on shortfall is payable @ 1% per month. In case of last instalment which is due on 15th March, interest @ 1% is payable for one month if tax is not paid at all or is paid after 15th March. [section 234C]. Note that this interest is calculated only upto 31st March, as from 1st April, interest @1% becomes payable on entire tax due under section 234B.

This interest is mandatory and there is no provision to grant exemption from payment of this interest.

4.8.4 Self Assessment

- Advance Tax has to be paid according to the schedule indicated in the previous paragraph.
- At the end of the year, the tax liability has to be calculated by the assessee and if any shortfall is noticed, it has to be made good by depositing the same either electronically or through the designated banks.
- If there had been lapses in timely payment of advance tax and arrears is more than 10%, interest as detailed in the earlier paragraph has to be calculated and deposited.
- The appropriate Income Tax Return form should be selected, filled and filed electronically or physically (if no refund is claimed). Companies have to compulsorily file their returns electronically and others have the option to file physical returns (if no refund is claimed).
- Since the rate of tax, interest for delayed payment of tax is known to the assessee he can make a self assessment and file the return.

4.8.5 Assessment

Where a return has been filed u/s 139 or in response to a notice under sub-section (1) Section 142, the return shall be processed as follows –

1. The total income of the assessee has to be calculated after correcting any arithmetical error and apparent incorrect claims in the return.
2. The tax and interest, if any, due shall be computed on the basis of the income so derived.



3. Taking into the tax paid by the assessee, a further demand along with interest due or refund order with due interest upto the time of assessment shall be prepared.
4. An assessment order shall be prepared giving the details of demand or refund and communicated to the assessee.

4.8.6 Best judgment Assessment

If an Assessee fails to make a return or a revised return or fails to comply with a notice issued by AO, the AO shall, on the basis of facts and records available, make an assessment of the income and tax liability of the assessee and pass an order demanding the tax along with interest, if any, due upto the time of assessment. Such an assessment is called Best Judgment Assessment.

4.8.7 Income Escaping Assessment

If the Assessing Office has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess such income as well as any other income which incidentally comes to his notice at the time of making assessment of income escaping assessment, by issuing a notice giving reasonable time to represent. Sections 147 to 153 of the Act lays down the procedure in this regard.

4.8.8 Rectification of Mistakes and Amendment to Assessment Order

The Assessment Officer can rectify the apparent mistakes if any on the order passed by him and make amendments to the same. If the mistake is pointed out by the Assessee and the AO is convinced, there may be no issue. However, when it is down on the basis of own review by the AO or upon being brought to his notice by the deductor/collector of tax or some other concerned party, AO may proceed to make the correction/amendment after issuing notice to the assessee and an opportunity of being heard to him to present his case, particularly when there is a demand or reduction in refund order passed earlier.

4.8.9 Compliance with Assessment Order or Contesting the same

When there is a demand or lesser refund than what was sought for, there is bound to be a grievance. The assessee can comply with the order by taking the smaller refund or meeting the demand or he can prefer an appeal departmentally. After exhausting the departmental appeals, he can take recourse to Appeals in IT Appellate Tribunal and thereafter to the High Court or Supreme Court as the case may be.

4.8.10 Provisions relating to different types of assessee and incomes and other matters

While paying tax and filing the return by the assessee and assessing income and tax liability of the assessee, certain provisions relating to different types of persons and nature of income have to be understood and applied by the respective parties. The provisions relating to the different types of assessee and incomes are briefly outlined below:

Study Note - 4 : Income Tax

4.8.10.1 Individual

An individual may get income from salary, house rent, business, profession, interest etc. An individual may carry out business under some different name. However, this is only for convenience of business or trade. The income of a proprietary firm is added to his income for purpose of income tax. If a person gets salary from a partnership firm where he is a partner, the income is treated as 'business income' though termed as 'salary'. The income tax rates for AY 2021-22 (FY 2020-21) are as follows –

For individuals and HUF at any time during the previous year (For Both Men and Women)

Senior citizen (Resident) (Age 60 to 80 Years) Rs.			Senior citizen (Resident) (Age 80 Years or more) Rs.			Any other individual/HUF Rs.		
On the first	300,000	Nil	On the first	500,000	Nil	On the first	250,000	Nil
On next	200,000	5%				On next	250,000	5%
On next	500,000	20%	On next	500,000	20%	On next	500,000	20%
On the balance		30%	On the balance		30%	On the balance		30%

Section 115BAC – Individuals and HUFs have **an option to pay tax** in respect of their total income (other than income chargeable to tax at special rates under Chapter XII) at following concessional rates, if they **do not avail certain** exemptions/deductions like Leave Travel Concession, standard deduction under the head "Salaries", interest on housing loan on self-occupied property, deductions under Chapter VI-A (other than 80CCD(2) or section 80JJAA) etc. –

S. No.	Amount	Rates
1.	Upto 250,000	Nil
2.	From 250,000 to 500,000	5%
3.	From 500,000 to 750,000	10%
4.	From 750,000 to 1000,000	15%
5.	From 1000,000 to 1250,000	20%
6.	From 1250,000 to 1500,000	25%
7.	Above 1500,000	30%

Note that Individuals and HUFs exercising option u/s 115BAC are not liable to alternate minimum tax u/s 115JC.



Rebate Section 87A –In case of an individual resident in India, whose total income does not exceed Rs.500,000, shall be entitled to a deduction from the amount of income tax payable upto Rs.12,500.

S. No.	Particulars	Rates of Surcharge
1.	Where the total income (including dividend Income and capital gains chargeable to tax u/s 111A and 112A) exceeding 50 lakhs but upto 1 crore	Surcharge would be levied @10% on income tax computed on total income
2.	Where the total income (including dividend Income and capital gains chargeable to tax u/s 111A and 112A) exceeding 1 crore but upto 2 crore	Surcharge would be levied @ 15% on income tax computed on total income
3.	Where the total income (excluding dividend Income and capital gains chargeable to tax u/s 111A and 112A) exceeding 2 crore but upto 5 crore	Surcharge would be levied @ 25% on income tax computed on total income
4.	Where the total income (excluding dividend Income and capital gains chargeable to tax u/s 111A and 112A) exceeding 5 crore	Surcharge would be levied @ 37% on income tax computed on total income
5.	The rate of surcharge on the income-tax payable on the portion of dividend income and Capital gains chargeable to tax u/s 111A and 112A	Not exceeding 15%

Health and education cess – The income-tax, as increased by the surcharge or as reduced by the rebate under section 87A, if applicable, is to be further increased by an additional surcharge called health and education cess on income-tax @4% of income-tax plus surcharge, if applicable.

Study Note - 4 : Income Tax

Income Tax Rates for AOP/BOI/Any other Artificial Juridical Person

On first 2,50,000	NIL
On next 2,50,000	5%
On next 5,00,000	20%
On above 10,00,000	30%

Clubbing of Income – Often salary or other expenses from business are shown in name of close relatives like spouse (wife/husband) or minor child, to reduce tax liability. In such case, if the individual has a substantial interest in the concern, the income of such wife, husband or minor child will be added to the income of such individual. This is termed as 'clubbing of income'.

The clubbing provision is not applicable if spouse possesses technical or professional qualifications and the income is solely due to application of his/her technical knowledge and experience.

If an asset is transferred to the spouse, income from such asset is also treated as income of the individual. [e.g. by transferring shares, house property etc.].

Similarly, if an individual throws his separate property into the property of HUF, income from such converted property will be included in the total income of such individual.

4.8.10.2 HUF

A Hindu Undivided Family (HUF) consists of all persons lineally descended from a common male ancestor. It is assessable in respect of income derived from the joint family corpus.

However, income earned by individual members of HUF in their individual and personal capacities is taxed as their personal income. Such income is not treated as income of HUF.

Thus, it is possible to have an income from a proprietary firm (in individual capacity) as well as income from a business of HUF. Both are eligible for separate tax exemptions. Business of HUF can, of course, be conducted in a different name. In such case, the HUF will be proprietor of the firm in the name of which business is being conducted.

It may be noted that there is no question of 'forming' an HUF, as every male Hindu automatically has 'HUF'. A Hindu male can have his own separate HUF even if his father or son has separate HUF. One HUF with only one male member is permissible. Any 'HUF' can have business run by head of the HUF called 'karta'.

If an individual throws his separate property into the property of HUF, income from such converted property will be included in the total income of such individual. Hence, the HUF business should be from independent source of capital and not from the funds provided by an individual member of the HUF. Thus, if an HUF intends to conduct a business, its financial resources have to be carefully planned.



HUF should start business with loans/gifts from unrelated persons/bankers. Accounts and finances of HUF business should be kept separate. Otherwise, there is a possibility that income of HUF will be clubbed with the income of an individual.

The income of HUF is chargeable at the same rate as individual income as stated above. Thus, if an individual splits his business partly in his individual capacity and partly in name of firm owned by HUF, considerable tax saving is possible, if done systematically and carefully.

4.8.10.3 Partnership Firm including Limited Liability Partnership

Income of the partnership firm has to be calculated after deducting salary and interest payable to partners at prescribed rates.

A firm/LLP is taxable at the rate of 30% plus Health & Education Cess of 4% of income-tax and surcharge. Surcharge is payable as per above provisions discussed in the table.

In respect of LLP, as Minimum Alternate Tax in the case of companies, there is provision for Minimum Alternate Tax of 15% on book profits plus (Surcharge and cess as applicable). Alternate Minimum Tax becomes payable when there is no profit due to charge of depreciation applicable under Income-tax but there is a book profit due to charging depreciation as prescribed in the Companies Act.

Special provisions in respect of Partnership firm

A partnership firm is presently assessed @ 30% Plus Surcharge 12% (if total income exceeds Rs.1 crore) and cess 4%. The firm can pay salary and interest on capital to the partners. Income tax is payable on profits calculated after deducting salary and interest paid to partners. The salary paid to partners is treated as 'business income' in their hands and is taxable accordingly.

The partnership firm may or may not be registered. However, the partnership must be evidenced by a partnership deed. The deed should indicate (i) individual shares of the partners, (ii) Salary payable to working partners and (iii) Interest, if any payable to any partner. A true copy of partnership deed certified and signed by all the partners should be filed along with the first return of income. Subsequently, the copy is not required to be filed along with every return. However, if there is any change in the partnership agreement, a fresh copy has to be filed.

Return of partnership firm can be signed by managing partner. The salary/remuneration payable to partners is as follows -

a. On the first Rs.300,000 of the book-profit or in case of loss	Rs.150,000 or 90% of the book-profit (whichever is more)
b. On the balance of the book profit	at the rate of 60%



Study Note - 4 : Income Tax

The salary can be paid only to working partners. Such payment should be authorised by partnership deed. This salary is allowed as deduction from income of the partnership firm and is taken as business income of the individual partner.

Income Tax Act provides that interest upto 12% may be paid to the partners will be allowable as deduction from income of partnership firm. Such payment should be authorised by partnership deed. This interest is allowed as deduction from income of the partnership firm and is taken as 'Business income' of the individual partner.

4.8.10.4 Company

4.8.10.4.1 Domestic Company

Income tax rate 25% of the total income (plus applicable surcharge and cess), where its total turnover or the gross receipt in the previous year 2017-18 does not exceed Rs.400 crore.

4.8.10.4.2 Foreign Company

In case of foreign company, income tax is @ 40% (plus applicable surcharge and cess). Surcharge 2% of Income tax where total income exceeds Rs.1 crore and 5% of Income tax where total income exceeds Rs.10 crore. Health & Education cess is 4% on income tax and surcharge.

4.8.10.4.3 Marginal Relief

Marginal relief is available to companies where the net income over and above Rs.1 crore or Rs.10 crore does not cover the tax and surcharge thereon, by restricting the tax and surcharge attributable to such additional income to the extent of such additional income. However, no marginal relief is available in respect of Health & Education Cess of 4%.

4.8.10.4.4 Minimum Alternate Tax (MAT)

Many companies charge depreciation in their books on straight line method. Thus, the profit shown is higher in the accounts maintained for company law purposes and they can declare dividend. However, for income tax purposes, they charge depreciation on WDV which is higher. Thus, for income tax purposes, they may show low profit or even loss, while in balance sheet prepared for company law purposes, they will show high profits, which is called 'book profits'. Hence, such companies have to pay minimum income tax [section 115JB].

Rate of MAT as % of book profit is 15% for AY 2021-22 in respect of both domestic and foreign companies. However, surcharge will be at the same rates as prescribed for normal taxation. Health & Education Cess @ 4% on MAT plus surcharge is payable. Marginal relief is available in the case of MAT also.



4.8.10.5 Co-operative societies

Following rates are applicable to a co-operative society for the –financial year 2017-18 onwards:

Net Income	Rate of income-tax
Upto Rs.10,000	10%
Next Rs.10,000	20% or 22% (new scheme)
Above Rs.20,000	30%

Surcharge is applicable @12% on tax in case the total income exceeds Rs. 1 crore during the previous year. However, no surcharge is levied in case if the income is less than Rs.1 crore. Health & Education Cess @ 4%.

Various exemptions are available to cooperative societies u/s 80P of Income Tax Act. However, there is no exemption to urban cooperative banks.

4.8.10.6 Local authorities

Tax rate is 30%. Surcharge is levied @12% of tax in case of Firms and Local Authorities as if the total income exceeds Rs. 1 crore during the previous year. However, no surcharge is applicable if the income is less than Rs. 1 crore. Health & Education Cess @ 4%.

4.8.10.7 Other General Provisions

Carry forward of loss other than speculation loss – Carry forward of loss is permitted only when return is filed in time (i.e. on or before due dates of filing of return of income). In case of closely held company, unabsorbed loss can be carried forward and set off only if at least 51% of shares are held beneficially by same persons who were holding them in year of loss incurred and in the year of set off.

Unabsorbed depreciation – Unabsorbed depreciation can be set off against any head of income other than salary. It can be carried forward to any number of years. It can be carried forward by same assessee even in case of amalgamation subject to fulfilment of conditions prescribed in rule 9C.

Speculative loss – Loss from speculative transactions involves sale and purchase of commodities including stocks and shares. It can be set off against speculative profits only and can be carried forward for four years.

4.9 TAX DEDUCTION AT SOURCE (TDS)

4.9.1 Why Tax Deduction at source?

Tax deduction at Source helps timely realisation by Government and reduces the liability of the individual as it is deducted at a uniform rate as and when there is income.

Study Note - 4 : Income Tax

4.9.2 Who is liable to deduct tax?

The person who makes the payment is responsible for deducting the tax at source and depositing the same with Government.

4.9.3 What are the other obligations of the deductor?

A person is under liability to deduct income tax at source and pay it to Government should issue a certificate to the person from whom tax is deducted, so that the person can submit the same to Income Tax authorities. Generally, tax deducted in a month shall be deposited on or before the 7th of the next month with the designated bank either by cash/cheque/DD or through internet.

Within 30 days from end of every quarter, a return in the prescribed form has to be filed with the respective TDS Ward of the ITO.

4.9.4 TDS from salary

Every employer has to deduct tax from salary of employees. While deducting tax at source, the employer can consider the investments made by employee which qualify for exemption like payment for purchase or construction of house, medical insurance premium etc. Income tax is to be deducted every month and should be paid to Government within the time. The employer can adjust deductions of TDS from month to month so that total deductions from salary of the whole year are equal to tax payable by employee on salary income.

Deduction under section 80G is not to be considered by employer (except some specified funds like PM Relief Fund etc.) while calculating tax liability of employee. The tax relief has to be claimed by employee through tax return.

4.9.5 TDS from Interest other than interest on securities

Tax should be deducted from interest paid @10% if interest payable in financial year exceeds Rs 40,000 (for senior citizen this limit is Rs.50,000) in case of banks, post office and cooperative society and Rs 5,000 in case of others [section 194A].

- No surcharge or education cess is deductible/collectible at source on payment made to residents (Individuals/HUF/Society/AOP/Firm/Domestic Company) on payment of Incomes other than salary and wages.
- TDS at higher rate of 20% or TDS rate, whichever is higher, has to be deducted if the deductee does not provide PAN to the deductor.

If an individual who is a senior citizen can get interest without deduction of tax at source, if he submits a self-declaration to the payer in duplicate, in form No. 15H. Others have to submit declaration in form 15G. The payer has to submit one copy of declaration (form 15G/15H as applicable) to Commissioner of Income Tax under whose jurisdiction his tax is being assessed.



4.9.6 TDS from Payments to contractors and sub-contractors

TDS provisions apply if contract value exceeds Rs 30,000 for single payment or Rs 1,00,000 in aggregate for a financial year [section 194C].

In case of contracts TDS is at following rates

- If recipient is individual/HUF @1%
- If recipient is a cooperative society, AOP, local authority, firm, or domestic company @ 2%. If the amount credited exceeds Rs.50 lakh/1 crore, surcharge at applicable rates and cess thereon has to be additionally deducted.

4.9.7 TDS from commission/brokerage

- TDS @ 5% applies in respect of payment of commission or brokerage to resident.
- There is no need to deduct tax at source if commission/brokerage paid during the financial year is less than Rs 15,000. [section 194H].

4.9.8 TDS from Payments of Rent

TDS provisions apply if aggregate sum of rent paid exceeds Rs.2,40,000/- per annum [section 194-I].

The TDS on rent is @ 2% s for plant & machinery and @ 10% for land, furniture etc.

4.9.9 TDS from Payments for professional or technical services

- TDS @ 10% for professional, @ 2% for technical services applies if aggregate sum paid exceed Rs.30,000 per annum [section 194J].
- TDS should be on total payment (excluding GST) even reimbursement of expenses, as per CBDT circular No.715 dated 8-8-1995.

4.9.10 Applicability of TDS by Individuals and HUF

Individuals and HUF are not required to deduct tax at source if they are not required to file tax audit report u/s 44B. In case they are required to file tax audit report, they are required to deduct tax at source at applicable rates and deposit the same within 7 days in the designated bank, submit quarterly returns and issue TDS Certificates to deductees. However, in the case of Salary disbursement, individuals and HUF have to deduct tax at source if the salary paid by them to an individual exceeds the exemption level, and complete other formalities like deposit within 7 days, submission of Quarterly TDS returns and issue of TDS certificates to deductees.

4.9.11 TAN number

Assessee under an obligation to deduct TDS should obtain TAN (Tax Deduction Account Number) which is required to be quoted on all TDS returns. It is a 10 digit alphanumeric code.



Study Note - 4 : Income Tax

NSDL has been entrusted with the responsibility of issuing TAN for which an online application has to be submitted along with necessary fees and the supporting documents.

4.9.12 TDS Return

Person who has deducted tax at source is required to file online quarterly returns in Form 24Q/26Q/27Q to Income Tax department. He is also responsible to generate TDS certificates online from the IT Department's web site, sign and issue to the deductees. In case of any defects are detected by the deductor or discrepancies are brought to his notice by assessee, he can revise the return to rectify the defect/discrepancy.

4.9.13 Form 26AS

The TDS system has become transparent with computerisation. Assessee will be able to view 26AS containing the details of TDS credit in their name online and get any discrepancy rectified by interacting with the deductor and file their returns on time.

4.10 RETURNS

Every assessee should file an annual return in prescribed form. The prescribed forms to be submitted by different types of Assessee and the datelines are given below –

ITR Forms	Applicable to
ITR – 1 (i.e. Sahaj)	For resident and ordinarily resident individual who has income from salary/family pension/one house property (not being brought forward loss or loss to be carried forward) /IOS (not being loss and, not being winning from lottery/income from race horses) and who has not claimed any deduction under section 57 (except deduction pertaining to family pension).
ITR – 2	For individual/HUF where the total income does not include income under the head business or profession.
ITR – 3	For individual/HUF having income under the head business or profession.
ITR – 4 (i.e. Sugam)	For individual or a resident and ordinarily resident HUF or resident firm (not being LLP) deriving business income and such income is computed in accordance with special provisions referred to in section 44AD, 44ADA or 44AE.
ITR – 5	For firms, AOPs and BOIs or any other person (not being individual or HUF or company or to whom ITR-7 is applicable).
ITR – 6	For companies other than companies claiming exemption under section 11.
ITR – 7	For persons including companies required to furnish return u/s 139(4A)/(4B)/(4C)/(4D).
ITR - V	Where the data of the return of income in Forms ITR-1, ITR-2, ITR-3, ITR-4, ITR-5 and ITR-7 transmitted electronically without digital signature.



The income tax return is really a self assessment memorandum. The assessee should calculate the tax and interest payable by him and pay it by challan. The payment will of course be after deducting the advance tax which he might have already paid and TDS credit.

E-return – A beginning has been made in 2003 for electronic filing of return under Electronic Furnishing of returns of Income Scheme, 2003. Filing of e-return is compulsory for corporate assessee, individuals and Hindu Undivided Families whose accounts have to be audited under Section 44AB of the Income Tax Act.

Due dates for filing return

- (a) Individuals having only salary income and (b) Non-corporate assessees (Individuals, HUF, partnership firms or societies) having income from business or profession but who do not have to get their accounts audited under Income Tax or any other law – 31st July of Assessment Year.
- (b) Non corporate assessees (Individuals, HUF, partnership firms or societies) having income from business or profession and who have to get their accounts audited (b) A working partner of a firm in which has to get its accounts audited and (c) Corporate Assessee – 30th September Assessment Year.

The dates are mandatory unless these dates are extended by Government. If the return is filed beyond due date, mandatory interest @ 1% per month of tax due is payable. Belated return can be filed before the end of assessment year. A penalty Rs.5,000 shall be levied if return is filed after due date but on or before 31st December of assessment year or in any other case this penalty is Rs.10,000.

Verification of return – The return should be verified by individual, karta of HUF, managing partner, managing director etc. Return can also be verified by authorised representative. In some cases, electronic returns can be filed with digital signature or signing by the authroised person on the acknowledgement in ITR-V generated by the system and submission thereof to the Centralised Processing Agency at Bangalore.

Correction of arithmetical mistakes and incorrect claims – Arithmetical mistakes and incorrect claim apparent from the return can be corrected by department and intimation sent to assessee within one year from end of financial year in which return is made. If no such intimation is made, acknowledgment of return will be deemed to be intimation.

Scrutiny of returns – Some of the returns are taken by assessing officer for detailed scrutiny. Notice for scrutiny has to be served within 6 months from close of financial year in which return is furnished i.e. by 31st July/30th September. The assessing officer can require assessee to attend his office or produce evidence in support of the return filed.



STUDY NOTE – 5

TAX INVOICE, CREDIT AND DEBIT NOTES

This Study Note includes:

- Invoice under GST
- Importance of Tax Invoice under GST
- Contents
- Provisions Regarding Tax Invoice in Special Cases given under Rule 54
- Provisions of Transportation of Goods without issue of Invoice
- Interest Applicable under GST
- Provisions Pertaining to Collection of Tax and its Indication in Invoice [SECS. 32 and 33]
- Credit and Debit Notes
- Basic features of GST Return Mechanism
- Matching, Reversal and Reclaim of Input Tax Credit
- Electronic Liability Ledger
- Electronic Credit Ledger
- Electronic Cash Ledger
- Types assessments
- Penalties under GST
- Audit in GST

An invoice is a commercial instrument issued by a seller to a buyer. It identifies the trading parties, describes, and quantifies the items sold, shows the date of shipment and mode of transport, prices and discounts, if any, and the delivery and payment terms. This chapter explains provisions regulating tax invoice, credit and debit notes and other related issues.

5.1. INVOICE UNDER GST

Under the GST regime, an “invoice” or “tax invoice” means the tax invoice referred to in section 31. This section mandates the issuance of an invoice or a bill of supply for every supply of goods or services. It is not necessary that only a person supplying goods or services needs to issue an invoice. The GST law mandates that any registered person buying goods or services from an unregistered person needs to issue a payment voucher as well as a tax invoice. This type of invoice to be issued depends upon the category of registered person making the supply. For example, if a registered person is making or receiving supplies (from unregistered persons), then a tax invoice needs to be issued by such registered person. However, if a registered person is dealing only in exempted supplies or is availing the Composition Scheme (composition dealer), then such a registered person needs to issue a bill of supply in lieu of tax invoice. The invoice



should contain description, quantity and value and such other prescribed particulars (in case of supply of goods), and the description and value and such other prescribed particulars (in case of supply of services). An invoice or a bill of supply need not be issued if the value of the supply is less than Rs.200, subject to specified conditions.

5.2. IMPORTANCE OF TAX INVOICE UNDER GST

Under GST, a tax invoice is an important document. It not only evidences the supply of goods or services, but is also an essential document for the recipient to avail input tax credit. A registered person cannot avail input tax credit unless he is in possession of a tax invoice or a debit note. GST is chargeable at the time of supply. Invoice is an important indicator of the time of supply. Broadly speaking, the time of supply of goods is the date of issuance of an invoice. In the case of supply of services, the time of supply of services is the date of issuance of an invoice or receipt of payment, whichever is earlier. Thus, the importance of an invoice under GST cannot be over-emphasized. Suffice it to say, the tax invoice is the primary document evidencing the supply and vital for availing input tax credit.

Harmonized System of Nomenclature (HSN) – Harmonized System of Nomenclature (HSN) was developed by the World Customs Organization (WCO) with the vision of classifying goods all over the World in a systematic manner. HSN contains six digit uniform code that classifies 5,000+ products and which is accepted worldwide. India is using HSN in indirect taxes since 1986. Indian version is a much more detailed classification that added another two digits to the 6-digit structure. Under GST regime, suppliers of goods/services are required to follow a 3-tiered structure of HSN as follows –

If annual turnover of the supplier (in the immediately preceding financial year) is – - up to Rs. 1.50 crore, the supplier need not mention HSN in the invoice, - more than Rs. 1.50 crore but up to Rs. 5 crore, the supplier shall use 2 digit HSN code, - more than Rs. 5 crore, the supplier should use 4 digit HSN codes

Those persons who are in the business of imports or exports, shall mandatorily follow 8 digit HSN codes.

If taxable value is less than Rs. 200 – A registered person may not issue a tax invoice if the value of goods/services supplied is less than Rs. 200, if the following conditions are satisfied (these conditions are cumulative) –

1. The recipient is not a registered person
2. The recipient does not require such invoice
3. The registered person (who supplied goods/services) shall issue a consolidated tax invoice for such supplies at the close of each day in respect of all such supplies.



Study Note - 5 : Tax Invoice, Credit and Debit Notes

5.3. CONTENTS

5.3.1. Contents of Tax Invoice

There is no format prescribed for an invoice under CGST Act. However, rule 46 makes it mandatory for an invoice to have the following fields (only applicable field are to be filled) –

- (a) Name, address and GSTIN of the supplier;
- (b) A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets/numerals/special characters hyphen or dash and slash, and any combination thereof, unique for a FY;
- (c) Date of its issue;
- (d) **If recipient is registered** - Name, address and GSTIN or UIN of recipient;
- (e) Name and address of the recipient and the address of delivery, along with the name of State and its code **If such recipient is unregistered and value of supply is Rs.50,000 or more;**
- (f) Name and address of the recipient and the address of delivery, along with the name of State and its code **If such recipient is unregistered and value of supply is less than Rs.50,000** unregistered recipient may still request the aforesaid details to be recorded in the tax invoice;
- (g) HSN code for goods or services;
- (h) Description of goods or services;
- (i) Quantity in case of goods and unit or Unique Quantity Code thereof;
- (j) Total value of supply of goods or services or both;
- (k) Taxable value of supply of goods or services or both taking into account discount or abatement, if any;
- (l) Rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
- (m) Amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
- (n) Place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce;
- (o) Address of delivery where the same is different from the place of supply;
- (p) Whether the tax is payable on reverse charge basis; and
- (q) Signature or digital signature of the supplier or his authorized representative **(However, digital signature is not required in case of electronic invoice).**



5.3.2. Contents Of Bill Of Supply

A registered person supplying exempted goods/services or paying tax under Composition Scheme shall issue, instead of a tax invoice, a bill of supply. A bill of supply contains the following –

- (a) Name, address and GSTIN of the supplier;
- (b) A consecutive serial number not exceeding 16 characters, in one or more multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash and any combination thereof, unique for a FY;
- (c) Date of its issue;
- (d) Name, address and GSTIN or UIN, if registered, of the recipient;
- (e) HSN Code for goods or services;
- (f) Description of goods or services or both;
- (g) Value of supply of goods or services or both taking into account discount/ abatement, if any; and
- (h) Signature/digital signature of supplier/his authorized representative **(However, digital signature is not required in case of electronic Bill of Supply).**

5.3.3. Contents of Receipt Voucher

A registered person shall, on receipt of advance payment with respect to any supply of goods/ services, issue a receipt voucher or any other document, evidencing receipt of such payment. A receipt voucher shall contain the following particulars –

- (a) Name, address and GSTIN of the supplier;
- (b) A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash and any combination thereof, unique for a FY;
- (c) Date of its issue;
- (d) Name, address and GSTIN or UIN, if registered, of the recipient;
- (e) Description of goods or services;
- (f) Amount of advance taken;
- (g) Rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
- (h) Amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);



Study Note - 5 : Tax Invoice, Credit and Debit Notes

- (i) Place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce;
- (j) Whether the tax is payable on reverse charge basis; and
- (k) Signature/digital signature of supplier/his authorized representative

5.3.4. Contents of Refund Voucher

Advance payment is received by a registered dealer and receipt voucher is issued by him to the recipient of supply. But subsequently no supply is made and no tax invoice is issued. The said registered person may issue to the other party, a refund voucher against such payment. A refund voucher shall contain the following particulars –

- (a) Name, address and GSTIN of the supplier;
- (b) A consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash and any combination thereof, unique for a FY;
- (c) Date of its issue;
- (d) Name, address and GSTIN or UIN, if registered, of the recipient;
- (e) Number and date of Receipt Voucher issued;
- (f) Description of goods/services in respect of which refund is made;
- (g) Amount of refund made;
- (h) Rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
- (i) Amount of tax paid in respect of such goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
- (j) Whether the tax is payable on reverse charge basis; and
- (k) Signature/digital signature of supplier/his authorized representative

5.3.5. Contents of Payment Voucher

A registered person (who is liable to pay tax under reverse charge mechanism) shall issue a payment voucher at the time of making payment to the supplier. A payment voucher shall contain the following particulars –

- (a) Name, address and GSTIN of the supplier if registered;
- (b) A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and any combination thereof, unique for a FY



- (c) Date of its issue;
- (d) Name, address and GSTIN of the recipient;
- (e) Description of goods or services;
- (f) Amount paid;
- (g) Rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
- (h) Amount of tax payable in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
- (i) Place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce; and
- (j) Signature/digital signature of supplier/his authorized representative

5.3.6. Contents of Revised Tax Invoice

A registered person may, within 1 month from the date of issuance of certificate of registration, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him. A revised tax invoice shall contain the following particulars –

- (a) The word "Revised Invoice", wherever applicable, indicated prominently
- (b) Name, address and GSTIN of the supplier
- (c) Nature of the document
- (d) A consecutive serial number containing alphabets or numerals or special characters like hyphen or dash and slash symbolized as "-" and "/" respectively, and any combination thereof, unique for a financial year
- (e) Date of issue of the document
- (f) Name, address and GSTIN or UIN, if registered, of the recipient
- (g) Name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered
- (h) Serial number and date of the corresponding tax invoice or, as the case may be, bill of supply
- (i) Value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient
- (j) Signature or digital signature of the supplier or his authorized representative



Study Note - 5 : Tax Invoice, Credit and Debit Notes

5.4. PROVISIONS REGARDING TAX INVOICE IN SPECIAL CASES GIVEN UNDER RULE 54

The following special cases are given in rule 54 –

Input Service Distributor – An Input Service Distributor invoice (or an Input Service Distributor credit note) issued by an Input Service Distributor shall contain the following details –

- (a) Name, address and GSTIN of the Input Service Distributor
- (b) A consecutive serial number (not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters – hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year)
- (c) Date of its issue
- (d) Name, address and GSTIN of the recipient to whom the credit is distributed
- (e) Amount of the credit distributed
- (f) Signature or digital signature of the Input Service Distributor or his authorized representative

5.5. PROVISIONS OF TRANSPORTATION OF GOODS WITHOUT ISSUE OF INVOICE

- (a) Date and number of the delivery challan
- (b) Name, address and GSTIN of the consigner, if registered
- (c) Name, address and GSTIN or UIN of the consignee, if registered
- (d) Harmonised System of Nomenclature (HSN) code and description of goods
- (e) Quantity (provisional, where the exact quantity being supplied is not known)
- (f) Taxable value
- (g) Tax rate and tax amount - CGST, SGST, ITGST, UTGST or GST cess, where the transportation is for supply to the consignee
- (h) Place of supply, in case of inter-State movement
- (i) Signature



5.6. INTEREST APPLICABLE UNDER GST

Interest is applicable in the following cases –

Section	Different Situations	Rate of interest
50(1)	A person who is liable to pay tax (in accordance with different provisions under GST) fails to pay the tax (or part thereof) to the Government within the prescribed period	18%
50(3)	A taxable person who makes an undue or excess claim of input tax credit under section 42(10) or undue reduction in output tax under section 43(10)	24%
54(12)	A taxable person shall, notwithstanding anything contained in section 56, be entitled to interest on the recommendation of GST council, if as a result of the appeal or further proceedings he becomes entitled to refund	6%
56	If any tax ordered to be refunded is not refunded within 60 days of the refund application made by the taxpayer, interest will be paid by Government	6%
56 proviso	Where any claim of refund arises from an appellate order (which has attained finality) and the same is not refunded within 60 days from the date of receipt of application filed consequent to such order, interest will be paid by the Government after the expiry of 60 days	9%

5.7. PROVISIONS PERTAINING TO COLLECTION OF TAX AND ITS INDICATION IN INVOICE [SECS. 32 AND 33]

The following provisions are given by sections 32 and 33 –

Unauthorized collection of tax – A person who is not a registered person shall not collect in respect of any supply of goods/services any amount by way of GST. Moreover, a registered person shall not collect tax except in accordance with the provisions of CGST Act, SGST Act, UTGST Act, IGST Act or the rules made thereunder.

Amount of tax to be indicated in invoice – Where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.

5.8. CREDIT AND DEBIT NOTES

Section 34 regulates provisions pertaining to issue of credit and debit notes – **Credit notes** –

One or more credit note may be issued in the following circumstances –

1. Where one or more tax invoices have been issued for supply of any goods/services and the taxable value (or tax charged) in that tax invoice is found to exceed the taxable value (or tax payable) in respect of such supply.



Study Note - 5 : Tax Invoice, Credit and Debit Notes

2. Where the goods supplied are returned by the recipient (or where goods/services supplied are found to be deficient).

In the above two cases, the registered person (who is supplier) may issue to the recipient one or more credit notes. Barring the two cases given above, credit note cannot be issued (e.g., credit note cannot be issued for bad debts). A credit note should contain the details as prescribed by rule 53.

Declaration of credit note in return – Any registered person who issues a credit note in relation to a supply of goods/services shall declare the details of such credit note in the return for the month during which such credit note has been issued. However, credit note cannot be issued later than –

- a. September following the end of the financial year in which such supply was made, or
- b. the date of furnishing of the relevant annual return, whichever is earlier.

The tax liability shall be adjusted in such manner as may be prescribed. However, no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

Debit notes – One or more debit notes may be issued in the following case –

Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value (or tax charged in that tax invoice) is found to be less than the taxable value (or tax payable in respect of such supply).

In the aforesaid case, the registered person (who is the supplier) shall issue to the recipient one or more debit notes for supplies made in a financial year containing the details as prescribed by rule 53.

Declaration of debit note in return – Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued. Tax liability shall be adjusted in such manner as may be prescribed.

5.9. BASIC FEATURES OF GST RETURN MECHANISM

The basic features of the returns mechanism in GST include electronic filing of returns, uploading of invoice level information and auto-population of information relating to input tax credit from returns of supplier to that of recipient, invoice-level information matching and auto-reversal of input tax credit in case of mismatch. The returns mechanism is designed to assist the taxpayer to file returns and avail input tax credit.

Under GST, a regular taxpayer needs to furnish monthly/quarterly return and one annual return. There are separate returns for a taxpayer registered under the Composition Scheme, non-resident taxpayer, taxpayer registered as an input service distributor, a person liable to deduct or collect the tax (TDS/TCS) and a person granted Unique Identification Number. It is important



to note that a taxpayer is not required to file all types of returns. In fact, taxpayers are required to file returns depending on the activities undertaken.

All the returns are to be filed online. Returns can be filed using any of following method -

- GSTN portal
- Offline utilities provided by GSTN.
- GST Suvidha Providers (GSPs) [if a taxpayer uses the services of enterprise resource planning (ERP) providers (such as Tally, SAP, Oracle etc.), there is a high likelihood that these ERP providers would provide inbuilt solutions in the existing ERP systems].

Different returns (as provided in the original version applicable from July 1, 2017) – The table given below gives various types of returns under GST regulations (as originally drafted with effect from July 2017) –

Returns	Periodicity/Description	Who is liable to file	Due date for Filing
GSTR-1	Monthly Statement of Outward supplies of goods and/or services	Registered person with annual aggregate turnover greater than Rs.1.5 crore	11th of the next month
	Quarterly Statement of Outward supplies of goods and/or Services	Registered person with annual aggregate turnover up to Rs.1.5 crore	13th of the month succeeding the quarter
GSTR-2	Inward supply of taxable goods and/or services	Registered person	15th of the next month
GSTR-2A	Monthly read only documents from the recipient, to verify the details uploaded by the seller in GSTR-1	Registered person	15th of the next month
GSTR-3	Auto populated monthly document based on the details filled in GSTR-1, GSTR-2 and the tax liability of any preceding period	Registered person	20th of the next month
GSTR-3B	Monthly return for a normal taxpayer	Registered person	20th of the next month
GSTR-4	Monthly return for a composition dealer	Registered person paying tax under composition scheme	18th April of the next financial year
GSTR-5	Monthly return	Registered non resident Taxpayer	20th of the next month

Study Note - 5 : Tax Invoice, Credit and Debit Notes

GSTR-6	Monthly return	Input Service Distributor	13th of the next month
GSTR-7	Monthly return	Tax deductor	10th of the next month
GSTR-8	Monthly return	E-Commerce Operator	10th of the next month
GSTR-9	Annual return	Registered person other than an ISD, tax deductor/tax collector, casual taxable person and a non-resident taxpayer	31st December following the financial year end
GSTR-9A	Annual return for tax payers registered under composition scheme	Composition dealer	31st December following the financial year end
GSTR-9B	Annual return for E-Commerce platforms which are required to collect TCS	E-Commerce Operator	31st December following the financial year end
GSTR-9C	Annual return for tax payers who are required to get accounts audited by a CA	Registered person with annual turnover of ₹2 crores or more	31st December following the financial year end
GSTR-10	Final return	Taxable person whose registration has been surrendered or cancelled.	Within 3 months of the date of cancellation or date of order of cancellation, whichever is later.
GSTR-11	Monthly return for Unique Identification number holders	UIN Holders	28th of the next month in which the inward supplies are received.

5.10. MATCHING, REVERSAL AND RECLAIM OF INPUT TAX CREDIT

Details of every inward supply furnished by a recipient of supply for a tax period are matched as follows –

- With the corresponding details of outward supply furnished by the corresponding supplier in his valid return for the same tax period or any preceding tax period.
- With the IGST paid under section 3 of the Customs Tariff Act (in respect of goods imported).
- For duplication of claims of input tax credit.

Claim of input tax credit accepted – The claim of input tax credit in respect of invoices (or debit notes) relating to inward supply that match with the details of corresponding outward supply (or with the IGST paid on imports) shall be finally accepted and such acceptance shall be communicated to the recipient in Form GST MIS-1 through common portal.



Subsequent acceptance – The claim of input tax credit in respect of any tax period which had been communicated as mismatched but is found to be matched after rectification by the supplier or recipient shall be finally accepted and made available electronically to the person making such claim in Form GST MIS-1 through the common portal.

Excess claim – Where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the same supply (or the outward supply is not declared by the supplier) in his valid returns, the discrepancy shall be communicated to both such persons. The following procedure is followed –

The above mis-match will be communicated electronically through common portal. Communication will be in Form GST MIS-1 to the recipient and Form GST MIS-2 to the supplier.

The duplication of claims of input tax credit shall be communicated to the recipient in GST MIS-1 in such manner as may be prescribed.

A supplier to whom any discrepancy is made available (as stated above) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available

Likewise, the recipient to whom any discrepancy is made available (as stated above) may make suitable rectifications in the statement of inward supplies to be furnished for the month in which the discrepancy is made available.

Where the discrepancy is not rectified, an amount to the extent of discrepancy shall be added to the output tax liability of the recipient in his return to be furnished for the month succeeding the month in which the discrepancy is made available.

The amount claimed as input tax credit that is found to be in excess on account of duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated.

Interest payable by recipient – If because of aforesaid adjustments, output tax liability of recipient is increased, he shall be liable to pay interest @18% per annum on the amount so added from the date of availing the credit till the corresponding additions are made.

5.11. ELECTRONIC LIABILITY LEDGER

All liabilities of a taxable person under GST shall be recorded and maintained in electronic liability ledger in Form GST PMT-01. It shall be maintained for each person liable to pay tax, interest, penalty, late fee or any other amount on the common portal and all amounts payable by him shall be debited to the said register.

The electronic liability register of the person shall be debited by –

- a. the amount payable towards tax, interest, late fee or any other amount payable as per the return furnished by the said person;



Study Note - 5 : Tax Invoice, Credit and Debit Notes

- b. the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any proceedings under the Act or as ascertained by the said person;
- c. the amount of tax and interest payable as a result of mismatch under section 42 or section 43 or section 50; or any amount of interest that may accrue from time to time.
 - Payment of every liability by a registered person as per his return shall be made by debiting the electronic credit ledger or the electronic cash ledger and the electronic liability register shall be credited accordingly.
 - The amount of TDS/TCS or amount payable on reverse charge basis, or the amount payable by a Composition Scheme dealer, any amount payable towards interest, penalty, fee or any other amount under the Act shall be paid by debiting the electronic cash ledger and the electronic liability register shall be credited accordingly.
 - Any amount of demand debited in the electronic liability register shall stand reduced to the extent of relief given by the appellate authority or Appellate Tribunal or court and the electronic tax liability register shall be credited accordingly.
 - The amount of penalty imposed or liable to be imposed shall stand reduced partly or fully, as the case may be, if the taxable person makes the payment of tax, interest and penalty specified in the show cause notice or demand order and the electronic liability register shall be credited accordingly.
 - A registered person shall, upon noticing any discrepancy in his electronic liability ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in Form GST PMT-04.

5.12. ELECTRONIC CREDIT LEDGER

The electronic credit ledger shall be maintained in Form GST PMT-02 for each registered person eligible for input tax credit on the common portal. Every claim of input tax credit shall be credited to the said ledger.

- The electronic credit ledger shall be debited to the extent of discharge of any liability.
- Where a registered person has claimed refund of any unutilized amount from the electronic credit ledger in accordance with the provisions of section 54, the amount to the extent of the claim shall be debited in the said ledger.
- If the refund so filed is rejected, either fully or partly, the amount debited (as stated above), to the extent of rejection, shall be re-credited to the electronic credit ledger by the proper officer by an order made in Form GST PMT-03. A refund shall be deemed to be rejected, if the appeal is finally rejected (or if the claimant gives an undertaking to the proper officer that he shall not file an appeal).



- A registered person shall, upon noticing any discrepancy in his electronic credit ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in Form GST PMT-04.

5.13. ELECTRONIC CASH LEDGER

The electronic cash ledger shall be maintained in Form GST PMT-05 for each person, who is liable to pay tax, interest, penalty, late fee or any other amount under GST. This ledger is maintained on the common portal for crediting the amount deposited and debiting the payment therefrom towards tax, interest, penalty, fee or any other amount.

- **Challan** – Any person shall generate a challan in Form GST PMT-06 on the common portal and enter the details of the amount to be deposited by him towards tax, interest, penalty, fees or any other amount. Challan is generally valid for a period of 15 days.
- **Mode of deposit** - The deposit of tax, interest, penalty, etc., shall be made through any of the following modes, namely –
 - **Internet Banking through authorised banks** – Credit card or Debit card through the authorised bank. National Electronic Fund Transfer or Real Time Gross Settlement from any bank.
 - **Over the counter** – Payment through authorised banks for deposits up to Rs.10,000 per challan per tax period, by cash, cheque or demand draft.

However, the restriction for deposit up to Rs.10,000 in the case of over the counter payment shall not apply to deposit to be made by –

- Government Departments or any other deposit to be made by persons as may be notified by the Commissioner.
- Proper officer or any other officer authorised to recover outstanding dues from any person (whether registered or not) including recovery made through attachment or sale of movable/immovable properties.
- Proper officer or any other officer authorised for the amounts collected by way of cash, cheque or demand draft during any investigation or enforcement activity or any ad hoc deposit.

Payment by unregistered person - Any payment required to be made by a person who is not registered, shall be made on the basis of a temporary identification number generated through the common portal.

Challan Identification Number (CIN) – On successful credit of the amount to the concerned government account maintained in the authorised bank, a CIN shall be generated by the collecting bank and the same shall be indicated in the challan. On receipt of the CIN from the collecting bank, the said amount shall be credited to the electronic cash ledger of the person on whose behalf the deposit has been made and the common portal shall make available a receipt to this effect.



Study Note - 5 : Tax Invoice, Credit and Debit Notes

Where the bank account of the person concerned is debited but no CIN is generated or generated, the said person may represent electronically in Form GST PMT-07 through the common portal to the bank or electronic gateway through which the deposit was initiated.

Refund – Where a person has claimed refund of any amount from the electronic cash ledger, the said amount shall be debited to the electronic cash ledger. If the refund so claimed is rejected (either fully or partly), the amount debited to the extent of rejection, shall be credited to the electronic cash ledger by the proper officer by an order made in Form GST PMT-03. A refund shall be deemed to be rejected, if the appeal is finally rejected (or if the claimant gives an undertaking to the proper officer that he shall not file an appeal).

Discrepancy – A registered person shall, upon noticing any discrepancy in his electronic cash ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in Form GST PMT-04.

5.14. TYPES ASSESSMENTS

Different GST assessments are given below –

Self-assessment – Every registered person shall self assess GST payable and furnish a return for each tax period as specified under section 39.

Provisional assessment – One can avail the facility of provisional assessment in the two cases given below –

1. When the taxable person is unable to determine the value of goods/services.
2. When the taxable person is unable to determine rate of GST applicable. In these two cases, one can have provisional assessment. Procedures for such assessment is given below –
 - **Application for provisional assessment** – A registered person requesting for payment of tax on a provisional basis shall furnish an application in Form GST ASMT-01 on the common portal. The application should be submitted along with documents giving reason for payment of tax on a provisional basis. The proper officer may, on receipt of the application, issue a notice in Form GST ASMT-02 requiring the registered person to furnish additional information/documents in support of his request. The applicant shall file a reply to the notice in Form GST ASMT-03, and may appear in person before the said officer if he so desires.
 - **Order of proper officer** – Within 90 days from the receipt of application, the proper officer shall issue an order in Form GST ASMT-04 allowing the payment of tax on a provisional basis (indicating the value or the rate or both on the basis of which the assessment is to be allowed on a provisional basis). Order will also indicate the amount for which the bond is to be executed and security to be furnished (not exceeding 25 per cent of the amount covered under the bond).



- **Bond** – The registered person shall execute a bond (as given above) in Form GST ASMT-05 along with a security in the form of a bank guarantee for an amount as specified in the order of the proper officer. A bond furnished to the proper officer under SGST or IGST Act shall be deemed to be a bond furnished under CGST Act.
- **Final assessment** – The proper officer shall issue a notice in Form GST ASMT-06, calling for information and records required for finalization of assessment. Within 6 months from the date of communication of provisional order, final assessment should be completed (this period of 6 months may be extended by the Joint Commissioner/Additional Commissioner for a further period not exceeding 6 months and by the Commissioner for such further period not exceeding 4 years). The final assessment order should be passed in Form GST ASMT-07. Final assessment order will specify the amount payable by the registered person or the amount refundable, if any.

Interest – The registered person shall be liable to pay interest on GST not paid on due dates.
- **Release of security** – The applicant may file an application in Form GST ASMT-08 for the release of the security. This application may be made at any time after passing of final assessment. The proper officer shall release the security, after ensuring that the applicant has paid due GST along with interest. This order should be passed in Form GST ASMT-09 within a period of 7 working days from the date of the receipt of the application for release of security.

5.15. PENALTIES UNDER GST

The incidence of short payment of tax (or erroneous refund or wrong availment of input tax credit) may be because of the following reason –

Normal cases - An inadvertent bona fide mistake.

Fraud cases - It may be a deliberate attempt to evade the tax.

In these two cases, nature of offence is totally different. Consequently, separate provisions for recovery of the tax and levy of penalty have been made. Moreover, there are provisions to encourage voluntary compliance such as no penalty (or lesser penalty) if the due tax (along with interest) is within the specified time limit. The table below summarizes these provisions –

Action by taxpayer	Normal Cases	Fraud Cases
Tax (along with interest) paid before issue of notice	No penalty and no notice shall be issued	15% of tax and no notice shall be issued
Tax (along with interest) paid within 30 days of issue of notice	No penalty (all proceedings deemed to be concluded)	25% of tax (all proceedings deemed to be concluded)

Study Note - 5 : Tax Invoice, Credit and Debit Notes

Tax (along with interest) paid within 30 days of issue of communication of order	10% of the tax or Rs. 10,000, whichever is higher	50% of tax (all proceedings deemed to be concluded)
Tax (along with the interest) paid after 30 days of communication of order	10% of the tax or Rs. 10,000, whichever is higher	100% of tax

Note - No penalty is levied in cases where the self-assessed tax (or any amount collected as tax) is paid (with interest) within 30 days from the due date of payment.

Time for issue of notice and making order – Time-limit for issue of notice and issue of order pertaining to penalty is as follows –

Nature of case	Time for issuance of Notice	Time for issuance of Order
Normal Cases	Within 2 years and 9 months from the due date of filing Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund	Within 3 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund
Fraud Cases	Within 4 years and 6 months from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund	Within 5 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund
Any amount collected as tax but not paid	No time limit	Within one year from the date of issue of notice
Non-payment of self-assessed tax	No need to issue a show cause notice. Recovery proceedings can be started directly.	Penalty, @ 10% of the Tax amount or Rs. 10,000/-, whichever is higher, shall also be payable if the period of non-payment exceeds 30 days from the due date of payment of tax

5.16. AUDIT IN GST

Audit as per section 2(13) means the examination of records, returns and other documents maintained or furnished by the registered person under the GST Acts (or rules made thereunder or under any other law for the time being in force) to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of the GST Acts (or rules made thereunder).

GST is a trust based taxation regime wherein the assessee is required to self-assess his returns and determine tax liability without any intervention by the tax official. Therefore, a tax regime



that relies on self-assessment must put in place a robust audit mechanism to measure and ensure compliance of the provisions of law by the taxable person.

5.16.1 DIFFERENT TYPES OF AUDIT

GST has three different types of audit – Audit if turnover exceeds Rs. 2 crore - The first audit is by a chartered accountant/cost accountant. Every registered person whose aggregate turnover during a financial year exceeds Rs. 2 crore has to get his accounts audited by a Cost Accountant/Chartered Accountant and furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in Form GSTR-9C.

Normal audit – In the second type which is the normal audit, the Commissioner (or any officer authorised by him), can undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.

Special audit – The third type of audit is called the special audit. In special audit, the registered person can be directed to get his records (including books of account) examined and audited by a Chartered Accountant/Cost Accountant during any stage of scrutiny, inquiry, investigation or any other proceedings; depending upon the complexity of the case. During the scrutiny (inquiry, investigation or any other proceedings of a registered person), the Assistant Commissioner (or any officer senior to him), having regard to the nature and complexity of the case and the interest of revenue, might be of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits.

In such cases (with the prior approval of the Commissioner), the Assistant Commissioner or any officer senior to him can direct the registered person in Form GST ADT-03 to get his records (including books of account) examined and audited by a specified chartered accountant/cost accountant. The chartered accountant/cost accountant will be nominated by the Commissioner. The chartered accountant/cost accountant has to submit a report of such audit within the period of 90 days (extension for another 90 days is possible) to the Assistant Commissioner. Special audit is possible even if the accounts of the registered person have been audited under any other provisions of the GST Act (or any other law for the time being in force).

The registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit and which is proposed to be used in any proceedings against him under this Act (or the rules made thereunder). The expenses of the examination and audit of records, including the remuneration of such chartered accountant/cost accountant, shall be determined and paid by the Commissioner. On conclusion of the special audit, the registered person shall be informed of the findings of the special audit in Form GST ADT-04.

Where the special audit results in detection of tax not paid (or short paid or erroneously refunded, or input tax credit wrongly availed or utilised), the process of demand and recovery will be initiated against the registered person.



This image shows a full page of white paper with horizontal dotted lines. The lines are evenly spaced and run across the width of the page, providing a guide for handwriting practice. There are no margins, text, or other markings on the page.



This image shows a full page of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page, providing a template for handwriting practice. There are no margins, text, or other markings on the page.